

Wochnick, Heather M CIV USN (US)

From: Gilkey, Douglas E CIV OASN (EI&E), BRAC PMO West
Sent: Tuesday, November 23, 2010 15:42
To: Hart, Gordon E.; Amy Brownell; ANauble@waterboards.ca.gov; Andrea Bruss; Barry.Steinberg@KutakRock.com; carr.robert@epa.gov; Yantos, Christopher N CTR OASN (EI&E), BRAC PMO West; cynthia.evanko@aon.com; dcshipman@treadwellrollo.com; drathnayake@mactec.com; Elaine Warren; Hailstocke-Johnson, Ericka M.; gejohnson@treadwellrollo.com; george.schlossberg@kutakrock.com; Gregory_Schilz@aon.com; Kayaci, G Hamide CTR OASN (EI&E), BRAC PMO West; JAB@BCLTLAW.com; Dunn, Jacqueline E CIV NAVFAC SW, PACO; Whitcomb, James H CIV NAVFAC SW; JAustin@Geosyntec.com; jeff.giangiuli@calibresys.com; jill.bensen@ch2m.com; JFenton@mactec.com; Cummins, John M CIV NAVFAC SW; kbrasaemle@techlawinc.com; Forman, Keith S CIV OASN (EI&E), BRAC PMO West; Kloss.Sarah@epamail.epa.gov; Urizar, Lara L CIV NAVFAC SW, PACO; Leslie.Lundgren@CH2M.com; LRHENDRY@mactec.com; Kito, Melanie R CIV NAVFAC SW; RBrandt@Geosyntec.com; RElliott@dtsc.ca.gov; Callaway, Rex CIV NAVFAC SW; Ripperda.Mark@epamail.epa.gov; Liotta, Rita M CIV WEST Counsel; RMiya@dtsc.ca.gov; Hunt, Bob A CTR OASN (EI&E), BRAC PMO West; RSteenon@waterboards.ca.gov; Loli, Simon CTR OASN (EI&E), BRAC PMO West; sreinis@treadwellrollo.com; stephen.proud@lennar.com; steve.hall@ttemi.com; Suzanne.Hudson@lennar.com; Macchiarella, Thomas L CIV OASN (EI&E), BRAC PMO West; Thor Kaslofsky; Tiffany Bohee; tim.mower@ttemi.com; Victor Pappalardo; Larson, Elizabeth A CIV OASN (EI&E), BRAC PMO West
Cc: colinbarreno@paulhastings.com
Subject: Navy Redlines
Attachments: HPNS TSRS Navy Redline 11-19-10 to City.doc; HPNS FFA Amendment Navy Redline 11-23-10.doc; HPNS AOC Navy Redline 11-23-10.doc; Pre RACR RMP comments 112310.docx

Attached please find the Navy redline versions of the TSRS, AOC, and FFA as well as the RMP comments. For the FFA, The "base line" draft for the redline/markup was the Navy's 3 Sept 10 draft. EPA's 12 Oct 10 and SFRA's 7 Oct 10 comments are addressed. Proposed language supporting consistency with terms and conditions of the ETCA and AOC was also added including several definitions from the ETCA and AOC. Note that the margins and spacing of the expanded list of definitions needs to be edited for consistency.

R/
Doug

APPENDIX 9

Technical Specifications and Requirements Statement

1.0. INTRODUCTION

In accordance with the terms of the Early Transfer Cooperative Agreement (ETCA), this Technical Specifications and Requirements Statement (TSRS) provides the U.S. Department of the Navy's (Navy) general specifications for the San Francisco Redevelopment Agency (SFRA) regarding the scope of remediation activities that comprise the Environmental Services as defined in the ETCA. If there is any conflict between the provisions of the TSRS on the one hand, and the provisions of the main body of the ETCA, Remedial Design reports, and/or CERCLA RODs on the other, the terms of the main body of the ETCA, Remedial Design reports, and/or CERCLA RODs shall govern.

The Navy and SFRA intend to complete an early transfer of the ACES pursuant to Section 120(h)(3)(C) of CERCLA in order to facilitate redevelopment of the property. SFRA's responsibilities for the ACES are described in the ETCA and specific remedial actions are summarized in the remedial activities table (see Table 1). Table 1 lists those environmental sites of the ACES requiring remediation by SFRA and generally describes the activities to be accomplished for each site. Activities described in Table 1 may be modified by SFRA pursuant to the ETCA, with the exception of ESDs or ROD amendments, as long as said modifications do not affect SFRA's ability to achieve Regulatory Closure. Activities described in Table 1 will be undertaken in conjunction with redevelopment activities where the opportunity exists.

The SFRA shall complete Environmental Services for Environmental Conditions that are necessary to (1) comply with the CERCLA Records of Decision (ROD) and applicable Remedial Design Package reports (including Design Basis Report, Remedial Action Monitoring Plan [RAMP], Land Use Control Remedial Design [LUC RD], and Operation and Maintenance [O&M] Plan) and Remedial Action Work Plan (RAWP) reports, (2) address AOC requirements between SFRA and the Environmental Regulatory Agencies, (3) achieve Regulatory Closure throughout the ACES, and (4) comply with Long-term Obligations.

2.0. TECHNICAL SPECIFICATIONS AND REQUIREMENTS

The major components of the remediation activities that comprise the Environmental Services are outlined below:

1. Project management;
2. Remedial action work plan;
3. Remedy implementation;
4. Environmental insurance;
5. Remedial Action Completion Report and Regulatory Closure documentation;
6. Public involvement; and,
7. Submittal of documents and achievement of project schedule.

SFRA shall provide the necessary qualified and licensed personnel, equipment, and resources to successfully execute the Environmental Services. Project activities and responsibilities are outlined in the following sections and additional details on project activities listed below are included in Section 3.0 of this TSRS. The following Sections more fully specify the scope of the activities that comprise the Environmental Services that SFRA will conduct under the ETCA on behalf of the Navy.

2.1. Project Management

The complexity, magnitude, and unique nature of the cleanup at the ACES requires management and coordination of project activities to ensure that: (1) stakeholders are kept informed of the project status; (2) existing or potential problems are addressed; and (3) any changes that may be required to prudently manage the project are addressed. Project stakeholders include the Department of the Navy Base Realignment and Closure (BRAC) Program Management Office (PMO), Naval Facilities Engineering Command (NAVFAC), the Environmental Regulatory Agencies, SFRA, and Lennar Urban. To ensure that the requirements of the AOC, CERCLA, and the NCP are being met, the Navy may consult with SFRA, including review, comment, and concurrence on documents as set forth in Table xx. For documents requiring concurrence, the Navy shall have the right to review and approve the document before such documents are submitted to the Environmental Regulators.

SFRA shall maintain a project document repository, as well as provide copies to the Navy for the Navy's maintenance of the Administrative Record files as required by CERCLA, the NCP, and other applicable laws and regulations. SFRA shall be required to include the draft and final RAWP documents and related review comments, responses to comments, technical support documents, etc in a project repository as per Section 3.2 of this TSRS and also provide copies to the Navy for inclusion by the Navy in the Navy's CERCLA restoration post-decision record file. SFRA shall also be required to provide copies of documents to the Navy that it develops and that the Navy relies upon for ROD amendments or ESDs (see Section 300.825(a)(1) of the NCP) and 5-Year Reviews for the years 2013 and 2018. Documents provided to the Navy for inclusion in the Navy's CERCLA restoration post-decision record file shall meet the requirements listed in Attachment 1.

SFRA shall also prepare and submit periodic progress reports (as defined in Section 3.1) to the Navy that document technical progress to date, depict upcoming work, and describe any technical issues confronted with successful or proposed solutions. Finally, SFRA shall hold conference calls, as defined in Section 3.3, with the Navy representative on an as-needed basis as reasonably determined by the Navy to discuss the progress of the cleanup of the ACES and the status of ongoing documents and reports being reviewed by the Navy representative. The Navy representative shall be the BRAC Environmental Coordinator, or designated successor. Additional details on project management responsibilities are included in Sections 3.1 through 3.3 of this TSRS.

2.2. Remedial Action Work Plans

SFRA shall prepare the RAWPs as required under the AOC to provide for the construction of the remedy as set forth in design plans and specifications in the approved final remedial design documents (“Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” [ChaduxTt, date TBD], and “Final Remedial Design Package Parcel G” [ChaduxTt, date TBD]). SFRA shall submit draft and draft final RAWPs to the Navy for review and concurrence. The RAWPs may also include any revisions to the approved final remedial designs to address modifications desired by SFRA to support redevelopment. Any revisions to the remedial designs must still meet the requirements of the CERCLA RODs and the AOC.

2.3. Remedy Implementation

SFRA shall use funds provided under the ETCA to conduct the remedy implementation tasks outlined in the RODs and ensure that all remedial actions are performed in accordance with the terms of the ROD, RD, RAWP, AOC, CERCLA, the NCP and in support of the reuse specified in the reuse plan prepared by SFRA (the “1997 Reuse Plan”). **[The ETCA addresses changes to the reuse plan]** If SFRA plans to amend the 1997 Reuse Plan, it shall notify the Navy representative before proceeding with any of its associated obligations under the ETCA with respect to such amendment.

SFRA shall be responsible for developing documents associated with the remedial actions to achieve Regulatory Closure.

The Navy has followed the CERCLA process in the prior characterization of environmental conditions, analysis of remedial action alternatives, and selection of the remedy. Site characterization data are available in various reports referenced in Appendix A herein and in the Administrative Record files. The site characterization data have been used to select the remediation components and the site-specific activities summarized in the remedial activities required by the CERCLA RODs and are summarized in Table 1. The remedial actions, including institutional controls, for the ACES will comply with the AOC, CERCLA, the NCP, and other applicable state and federal laws and regulations and shall be protective of human

health and the environment. The CERCLA RODs and the AOC set forth the specific components of the remedy to be implemented at the ACES. Those remedial components are summarized below:

2.3.1. Soil Vapor Extraction (SVE) System Expansion and Operation

SFRA shall expand and operate the SVE system inside Building 123 as described in the “Final Remedial Design Package for Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD). SFRA shall decommission the SVE system after approval from the Environmental Regulatory Agencies. Details on operation of the SVE system including monitoring, reporting, and O&M activities are contained in the “Final Remedial Design Package for Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD). The SVE system shall be operated until the remedial action objectives specified in the Parcel B ROD, Remedial Design Package, and RAWP have been met. The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5).

2.3.2. Groundwater Remediation

SFRA shall inject polylactate at the IR Site 10 VOC plume for source control and to enhance natural attenuation. Injection and monitoring of the natural attenuation will be conducted in accordance with requirements and procedures specified in the Remedial Design Package and the RAWP. Details on the extent of the IR Site 10 VOC plume as well as information on monitoring and reporting are included in the “Final Remedial Design Package for Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD). SFRA shall conduct groundwater remediation until the remedial action goals for groundwater as presented in the approved CERCLA RODs and the RAMPs contained in “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD). The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5).

2.3.3. Covers over Soil

SFRA shall construct a durable cover over the ACES that (1) meets the specifications of the “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD), and (2) meets the requirements of San Francisco Department of Public Works or the San Francisco Department of Building Inspection codes, and (3) fulfills the requirements of the AOC. The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5). Regulatory Closure for covers must be achieved no later than 7 years after the date of execution of the ETCA.

2.3.4. Shoreline Revetment

SFRA shall construct a shoreline revetment for certain portions of the shoreline at Parcel B to prevent erosion and migration of underlying soil and sediment into San Francisco Bay. An example of an acceptable revetment design is presented in the “Final Remedial Design Package for Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD). The shoreline revetment shall: meet the specifications of the “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), or otherwise be approved by the Environmental Regulatory Agencies. The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5). Regulatory Closure for shoreline revetment must be achieved no later than 7 years after the date of execution of the ETCA.

2.3.5. Soil Vapor Intrusion Mitigation

SFRA shall design and implement engineering controls to prevent exposure to VOCs in soil gas that may accumulate within existing or future enclosed structures at concentrations that would pose unacceptable risk via inhalation of indoor vapors, based on the planned reuse. The Navy has established an initial ARIC for VOC vapors based on soil gas surveys conducted prior to redevelopment. The initial ARIC is documented in the technical memorandum summarizing the results of the soil gas surveys to be prepared by the Navy following completion of the surveys and submitted to the Environmental Regulatory Agencies for review, comment, and approval (Reference TBD). Design goals are presented in the “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18”, (ChaduxTt, date TBD) and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD).

Vapor mitigation shall meet the remedial action objectives stated in the AOC, “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD), and the requirements for vapor mitigation in “Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air, Interim Final” dated December 15, 2004, and revised on February 7, 2005. The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5).

Any proposed construction of enclosed structures within the Parcel B VOC ARIC must be approved by the FFA Signatories prior to construction in order to ensure that potential unacceptable risk from VOC vapors is reduced to acceptable levels. The reduction in potential risk can be achieved through engineering controls or other design alternatives that meet the specifications set forth in the “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD) and Remedial Action Work Plan. Enclosed structures within the Parcel B ARIC shall not be occupied until the Owner has requested and obtained approval (through approval of a Remedial Action Completion Report or similar document) that any necessary engineering

controls or design alternatives have been properly constructed and that VOC vapor risk level is acceptable.

2.3.6. Long-term Groundwater Monitoring

SFRA shall monitor elevations of and chemical concentrations in groundwater according to the requirements in the RAMPs that are included in “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD). Groundwater monitoring shall meet the remedial action objectives stated in the AOC, “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD). Long term groundwater monitoring shall continue until such time as the regulatory agencies have issued regulatory closure for groundwater conditions (See Section 2.5).

2.3.7. Five-year Reviews

SFRA shall prepare five-year review reports beginning with year 2023 and submit them to the Navy for review and approval and then to EPA for review, comment, and concurrence and to. Reports shall be similar to previous five-year review reports for HPNS and consistent with EPA guidance. The Navy will prepare the five-year review reports for 2013 and 2018 and submit them to EPA for review and comment.

2.3.8. Implementation of Institutional Controls and other Long-Term Obligations

SFRA shall implement the institutional control requirements of the LUC RDs that are included in the “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD), and CRUP(s) and Deed(s) that are signed and recorded at the time of transfer of title. SFRA shall ensure controls remain in place and shall monitor implementation of corrective actions for violations. Details are contained in the LUC RD documents that are included in “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD).

SFRA shall ensure compliance with the requirements of the O&M plans that are included in the “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD), as well as revisions to the O&M plans that may be made and approved by the Environmental Regulatory Agencies pursuant to the AOC to reflect the remedy as actually constructed. .

2.4. (Reserved. (NOTE: *procuring the insurance policies is not part of the scope of work; it is requirement of the ETCA and the ETCA can speak for itself – it provides for Navy approval of the policies.*)

2.5. Remedial Action Completion Report (RACR) and Regulatory Closure Documentation

SFRA shall submit to the Navy RACRs and Certification of Completion of Remedial Action issued pursuant to the AOC for the ACES in accordance with requirements of the AOC. As set forth Section 208 of the ETCA, the term “Regulatory Closure” means Environmental Regulatory Agency approval, by issuance of one or more Certifications of Completion of Remedial Action for CERCLA response actions that collectively address the entire ACES, pursuant to the procedures set forth in the AOC and to the extent the Environmental Services include activities not covered by the AOC, written Environmental Regulatory Agency approval that no further action is required for that condition. Receipt of the Certificate of Completion will document the Environmental Regulatory Agencies’ written confirmation of Regulatory Closure.

2.6. Public Involvement

Public involvement is required to obtain community input and maintain community understanding and support for the cleanup actions on the ACES. SFRA shall be responsible for notification to, involvement with, and solicitation of input from the public as required by the AOC, CERCLA, and the NCP, in coordination with the Environmental Regulatory Agencies and the Navy. The Navy will continue to be involved with other property on HPNS not affected by this early transfer and will require coordination of public involvement activities. SFRA will provide to the Navy, in timely fashion, pertinent information regarding its public involvement activities associated with the cleanup actions at the ACES, in order for the Navy to meet its site-wide community relations requirements under the Community Involvement Plan, CERCLA, and the NCP.

SFRA shall provide the Navy with two paper copies and one electronic copy of all documents that are submitted to the Environmental Regulatory Agencies and other parties for inclusion by the Navy in the Navy’s CERCLA restoration post-decision record file. Documents provided to the Navy for inclusion in the Navy’s CERCLA restoration post-decision record files shall meet the requirements listed in Attachment 1.

2.7. Submittal of Documents and Achievement of Project Schedule

SFRA shall submit all documents required under the AOC to be approved by the Environmental Regulatory Agencies to the Navy for review and comment, or with respect to documents listed in Table xx, for approval. ***NOTE: We should insert a provision in the ETCA providing that SFRA shall not propose an ESD or ROD amendment, or amendment to the AOC or CRUP without the concurrence of the Navy,. Those really are not part of the scope of the Environmental Services – they are changes to that scope --, so they do not belong in the TSRS.***

SFRA shall provide the Navy representative with two paper copies and one electronic copy of all documents and reports required under the ETCA to be provided to the Navy, including electronic copies of all geographic information system (GIS) data. The Navy representative will be responsible for reviewing documents and reports submitted to the Navy in a timely manner to support the project schedule, concurrent with regulatory review and schedules. The Navy representative reserves the right to obtain professional assistance, at its own cost, to review documents and reports that SFRA submits to the Navy.

If the Navy has comments or concerns, the Navy will notify SFRA within a reasonable time period, and discuss the concerns and comments with SFRA. SFRA shall provide documents to the Navy in a time and manner that will afford the Navy sufficient time for review and comment, or for approval as set forth above, before the documents are submitted to the appropriate Environmental Regulatory Agency. The appropriate “sufficient time” shall be assessed on a case-by-case basis in consideration of the nature and volume of the documents provided for Navy review. The Navy’s review of the documents and reports not listed on Table xx will be limited to the following scope:

- To ensure consistency with the ETCA and CRUPs
- To ensure consistency with CERCLA, the NCP, and any requirements applicable to non-CERCLA environmental issues
- To ensure that ETCA funds that have been or will be spent are in compliance with the scope as defined in Section 101 of the ETCA

In addition, if the Navy representative deems it necessary, the Navy representative may access the ACES for purposes of on-site quality assurance and verification of remediation performance in accordance with the ETCA and deed covenant.

3.0. ADDITIONAL INFORMATION

3.1. Project Progress Reports

SFRA shall submit project performance and financial reports to the Navy in accordance with Sections 301(f)(2) and (3) of the ETCA. Reports shall be in a format and contain information to enable the Navy to verify SFRA’s compliance with the ETCA. Progress reports required to be submitted to the Environmental Insurer and EPA under the AOC shall be deemed adequate for purposes of progress reports required to be provided to the Navy under this Section 3.1.

3.2. Project Repository

SFRA shall maintain a project repository for the ACES environmental services at an easily accessible location that is open to the public near HPNS for project-related environmental remediation information generated after property transfer to SFRA.

3.3. Conference Calls and Briefings

SFRA shall brief the Navy representative on an as-needed basis but in no instance more often than monthly on the status of the remediation activities at the ACES or other concerns regarding progress reports or other reports developed during the performance of the environmental services. Briefings will be conducted by means of conference calls that SFRA shall arrange as reasonably requested by the Navy.

Tables

- 1 Remedial Activities Required by the CERCLA RODs
- 2 Document Matrix Identifying Navy Review Roles

Appendix

- A Applicable and Relevant Environmental Documents

Attachment

- 1 Environmental Work Instruction EVR.4, Implementing and Maintaining the CERCLA Administrative Record and Compendium at NAVFAC Southwest
- 2 Environmental Insurance Policies

TABLE 1
REMEDIAL ACTIVITIES REQUIRED BY THE CERCLA RODS

Parcel	[Delete Column]	Remedial Action	Description
B		Soil Vapor Extraction	Operate SVE system at Building 123
B		Groundwater Treatment	Inject polylactate at IR Site 10 VOC plume
B and G		Covers	Install covers over all areas; various cover types (soil, asphalt, buildings, etc)
B		Shoreline Revetment	Construct revetment
B and G		Control of Soil Gas	Install and maintain vapor mitigation systems
B and G		Long-Term Obligations	Monitor groundwater in accordance with the RAMPs
			Conduct O&M activities in accordance with the O&M plans
			Implement and enforce ICs in accordance with the LUC RDs
			Prepare and submit 5-year review reports

Notes:

1 Area requiring institutional controls for mitigation of VOC vapors will be refined based on the results of soil gas surveys.

IC Institutional control
IR Installation Restoration
LUC RD Land use control remedial design
O&M Operation and maintenance
RAMP Remedial action monitoring plan
SVE Soil vapor extraction
VOC Volatile organic compound

Refer to the “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD) for the specific locations of these areas and for the RAMPs, LUC RDs, and O&M plans.

Table 2
DOCUMENT MATRIX IDENTIFYING NAVY REVIEW ROLES

The following table identifies documents that must be prepared by the SFRA in accordance with the ETCA and AOC and submitted to the Navy and identifies the Navy's role in reviewing them.

1. Information Only
a. AOC correspondence / documents
b. Public fact sheets
c. Reuse Plan updates
d. Notices of Force Majeure and related documents required by the AOC
e. Statements of Position and other documents submitted by SFRA/Lennar during dispute resolution under the AOC
f. Notices of Noncompliance and Stop Work, Findings of Default issued under the AOC
g. Health and safety plans submitted in conjunction with RAWPs
h. Long-term groundwater monitoring reports
i. Public involvement / community management plans
j. Waste management plans
k. Any other documents for which the AOC specifies that the Navy must be consulted
2. Review and Comment
a. Soil vapor extraction system reports (monitoring, O&M activities, etc)
e. Periodic progress reports and schedules including reports in the ETCA and AOC (as provided to the EI underwriter)
f. Annual IC Compliance Monitoring Reports
h. O&M plans
j. RACRs (and interim RACRs related to long-term obligations)
k. Reports related to long-term obligations (O&M inspection reports, etc)
p. Certification of Completion of Remedial Action
3. Review and Concurrence/Approval
a. Amendments to the Environmental Insurance Policies

b. Risk management plans and amendments
c. RAWPs, including alternate cover designs (pre- and post-remediation), shoreline revetment designs, and vapor mitigation system designs
d. Amended PCAPs
e. Soil vapor memorandum to adjust the size of the ARIC for VOC vapors
f. Five-year review reports (beginning with year 2023)
g. Amendments to LUC RD reports
h. Review and approval required in LUC/RD reports, RMPs, Covenants to Restrict Use of Property (CRUP), and Deeds

AOC	Administrative Order on Consent
ARIC	Area requiring institutional controls
EI	Environmental insurance
ETCA	Early transfer cooperative agreement
IC	Institutional control
LUC RD	Land use control remedial design
O&M	Operation and maintenance
PCAP	Petroleum corrective action plan
RACR	Remedial action completion report
RAWP	Remedial action work plan
SFRA	San Francisco Redevelopment Agency
VOC	Volatile organic compound

Explanation of Categories:

“Information Only” means the Navy receives the document in its final form and does not receive draft or draft final versions. The Navy will not provide comments on these documents.

“Review and Comment” means the Navy receives draft, draft final, and final versions of the document and may provide comments for SFRA and Environmental Regulatory Agency consideration.

“Review and Concurrence/Approval” means the Navy receives draft, draft final, and final versions of the document. The Navy shall provide comments and the Navy and SFRA must reach agreement on the resolution of Navy’s comments before the document is finalized and the Navy must concur upon the final document.

APPENDIX A
APPLICABLE AND RELEVANT DOCUMENTS

The Navy believes that documentation provided with this TSRS represents the most recent and appropriate documentation available for Hunters Point Naval Shipyard and the sites identified in this TSRS. However, if there is a conflict between this information and other site documentation (the existing reports), SFRA is solely responsible for reviewing all available information and forming its independent, professional conclusions and interpretations of site conditions and requirements to meet the objectives of the ETCA. This information is not intended as a substitute for complete analysis of technical data available, nor is it intended to be a guide on how SFRA should address achievement of the performance objectives/standards.

Specific documents may be made available following a request to the Navy, if the documentation can be distributed in a timely manner. Electronic format is not guaranteed.

Applicable and Relevant Documents		
Title	Author	Date
Technical memorandum reporting results of soil gas surveys and delineating the areas requiring institutional controls for VOC vapors	Sealaska	10/10?
Draft Final Remedial Design Package, Parcel B, Excluding Installation Restoration Sites 7 and 18, Hunters Point Shipyard, San Francisco, California	ChaduxTt	7/30/10
Draft Work Plan for Soil Vapor Intrusion Survey, Parcels B, D-1, G, and UC-2, Hunters Point Shipyard, San Francisco, California	Sealaska	7/10
Remedial Action Work Plan for Installation Restoration Sites 07 and 18 at Parcel B; Soil Hotspot Locations at Parcels B, D-1, and G; and Soil Stockpiles at Parcels D-1 and G, Hunters Point Shipyard, San Francisco, California	ERRG	7/10
Draft Final Remedial Design Package, Parcel G, Hunters Point Shipyard, San Francisco, California	ChaduxTt	6/8/10

Applicable and Relevant Documents		
Title	Author	Date
Final Memorandum, Approach for Developing Soil Gas Action Levels for Vapor Intrusion Exposure at Hunters Point Shipyard, San Francisco, California	ChaduxTt	4/30/10
Final Parcels D-1 and G Groundwater Treatability Study Technical Report, IR-09, IR-33, and IR-71, Hunters Point Shipyard, San Francisco, California	Alliance Compliance	3/10
Final Remedial Design Package, Installation Restoration Sites 7 and 18, Parcel B, Hunters Point Shipyard, San Francisco, California	ChaduxTt	1/8/10
Draft Petroleum Hydrocarbon Site Closure Report, Parcels D-1, D-2, and G (Former Parcel D), Hunters Point Shipyard, San Francisco, California	ITSI	12/09
Shoreline Protection Technical Memorandum, Installation Restoration Site 7, Parcel B, Hunters Point Shipyard, San Francisco, California	ChaduxTt	4/3/09
Final Record of Decision for Parcel G, Hunters Point Shipyard, San Francisco, California	Navy	2/18/09
Candlestick Point / Hunters Point Development Project, Initial Shoreline Assessment	Moffat and Nichol	2/09
Draft Removal Action Completion Report, Time-Critical Removal Action for the Methane Source Area at IR-07, Parcel B, Hunters Point Shipyard, San Francisco, California	SES-TECH	2/09
Final Amended Parcel B Record of Decision, Hunters Point Shipyard, San Francisco, California	ChaduxTt	1/26/09
Final Removal Action Closeout Report, Time Critical Removal Action, Parcel B, IR-26, Hunters Point Shipyard, San Francisco, California	Insight	1/09
Final Second Five-Year Review of Remedial Actions, Hunters Point Shipyard, San Francisco, California	Jonas	11/11/08
Final Parcel B Construction Summary Report, Hunters Point Shipyard, San Francisco, California	ChaduxTt	7/25/08
Final Base-wide Radiological Work Plan Revision 2, Hunters Point Shipyard, San Francisco, California	TtEC	5/08
Final Parcel B Technical Memorandum in Support of a Record of Decision Amendment, Hunters Point Shipyard, San Francisco, California	ChaduxTt	12/12/07
Revised Final Feasibility Study for Parcel D, Hunters Point Shipyard, San Francisco, California	SulTech	11/30/07
Technical Memorandum for Contamination Delineation at Remedial Unit C5, Revision 1, Hunters Point Shipyard, San Francisco, California	CE2	11/06

Applicable and Relevant Documents		
Title	Author	Date
Final Phase III Soil Vapor Extraction Treatability Study Report, Parcel B	ITSI	11/06
Final Basewide Radiological Removal Action, Action Memorandum, Revision 2006, Hunters Point Shipyard, San Francisco, California	Navy	4/21/06
Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air, Interim Final	DTSC	2/7/05
Historical Radiological Assessment, Volume II, Use of General Radioactive Materials, 1939 to 2003, Hunters Point Shipyard	NAVSEA	8/04
Draft Final Post Construction Report: Decontaminate Process Equipment, Conduct Waste Consolidation, and Provide Asbestos Services in Parcels B, C, D, and E, Hunters Point Shipyard, San Francisco, California	TtFW	7/9/04
Final Cost and Performance Report, Zero-Valent Iron Injection Treatability Study, Building 123, Parcel B	ERRG and URS	6/04
Final Community Involvement Plan, Hunters Point Shipyard, San Francisco, California	ITSI and Tetra Tech	4/04
Final Parcel B Shoreline Characterization Technical Memorandum, Hunters Point Shipyard, San Francisco, California	Tetra Tech and ITSI	3/23/04
Final First Five-Year Review of Remedial Actions Implemented at Hunters Point Shipyard, San Francisco, California	Tetra Tech	12/10/03
Draft Waste Consolidation Summary Report, Parcel B, Hunters Point Shipyard, San Francisco, California	IT Corp	10/23/02
Letter Regarding Concurrence that A-Aquifer Groundwater at the Hunters Point Naval Shipyard, San Francisco, Meets the Exemption Criteria in the State Water Resources Control Board Source of Drinking Water Resolution 88-63. From Mr. Curtis Scott, Water Board. To Mr. Keith Forman, Base Realignment and Closure Environmental Coordinator, Naval Facilities Engineering Command	RWQCB	9/25/03
Final Soil Vapor Extraction Confirmation Study Summary, Building 123, Installation Restoration Site 10, Parcel B, Hunters Point Shipyard, San Francisco, California	Tetra Tech	8/19/03
Five-Year Review Process in the Superfund Program EPA/540/F/02/004	EPA	4/03
Draft Phase II Soil Vapor Extraction Treatability Study Report, Building 123, IR-10, Parcel B, Hunters	IT Corp	2/14/02

Applicable and Relevant Documents		
Title	Author	Date
Point Shipyard, San Francisco, California		
Definition of the Installation Restoration Site 25 Boundary. Memorandum from Mr. Richard Mach, BRAC Environmental Coordinator, to Hunters Point Shipyard administrative record file	Navy	2/1/02
Information Advisory Clean Imported Fill Material	DTSC	10/01
Comprehensive Five-Year Review Guidance EPA/540/R/01/007	EPA	6/01
Final Technical Memorandum, Parcel B Storm Drain Infiltration Study, Hunters Point Shipyard, San Francisco, California	Tetra Tech	2/28/01
Final Remedial Design Documents Amendment, Parcel B, Hunters Point Shipyard, San Francisco, California	Tetra Tech	2/20/01
Final Technical Memorandum, Distribution of the Bay Mud Aquitard and Characterization of the B-Aquifer in Parcel B, Hunters Point Shipyard, San Francisco, California	Tetra Tech	2/19/01
Final Explanation of Significant Differences, Parcel B, Hunters Point Shipyard, San Francisco, California	Navy	5/4/00
Final Remedial Design Documents, Parcel B, Hunters Point Shipyard, San Francisco, California	Tetra Tech and MK	8/19/99
Draft Final Technical Memorandum, Nickel Screening and Implementation Plan, Hunters Point Shipyard, San Francisco, California	Tetra Tech	8/4/99
Polychlorinated Biphenyl Survey/Abatement Report, Hunters Point Shipyard, San Francisco, California	SSPORTS	7/99
Completion Report, Exploratory Excavations, Hunters Point Naval Shipyard, San Francisco, California	IT Corp	6/99
Final Basewide Environmental Baseline Survey, Revision 01, Hunters Point Shipyard, San Francisco, California	Tetra Tech	9/4/98
Final Explanation of Significant Differences, Parcel B, Hunters Point Shipyard, San Francisco, California	Navy	8/24/98
Final PCB Assessment and Removal Report for High Voltage PCB Electrical Devices, Hunters Point Shipyard, San Francisco, California	SSPORTS	3/24/98
Final Record of Decision, Parcel B, Hunters Point Shipyard, San Francisco, California	Navy	10/7/97
Hunters Point Shipyard Redevelopment Plan	SFRA	7/14/97
Parcel B Feasibility Study, Final Report, Hunters Point Shipyard, San Francisco, California	PRC	11/26/96

Applicable and Relevant Documents		
Title	Author	Date
Parcel D Remedial Investigation, Draft Final Report, Hunters Point Shipyard, San Francisco, California	PRC and others	10/25/96
Estimation of Hunters Point Shipyard Groundwater Ambient Levels Technical Memorandum, Hunters Point Shipyard, San Francisco, California.	PRC	9/16/96
Parcel B Remedial Investigation, Draft Final Report, Hunters Point Shipyard, San Francisco, California	PRC and others	6/3/96
Draft Calculation of Hunters Point Ambient Levels, Hunters Point Annex, San Francisco, California	PRC	8/17/95
Draft Final Parcel D Site Inspection Report Naval Station Treasure Island Hunters Point Annex, San Francisco, California	HLA	1994
Preliminary Assessment Other Areas/Utilities, Naval Station Treasure Island Hunters Point Annex, San Francisco, California	HLA	10/19/90
Initial Assessment Study of Hunters Point Naval Shipyard (Disestablished), San Francisco, California	NEESA	10/84

BRAC	Base realignment and closure
DTSC	Department of Toxic Substances Control
EPA	U.S. Environmental Protection Agency
ERRG	Engineering/Remediation Resources Group
HLA	Harding Lawson Associates
ITSI	Innovative Technical Solutions, Inc.
MK	Morrison Knudsen Corporation
NAVSEA	Naval Sea Systems Command
NEESA	Naval Energy and Environmental Support Activity
PCB	Polychlorinated biphenyl
PRC	PRC Environmental Management, Inc.
RWQCB	San Francisco Bay Regional Water Quality Control Board
SFRA	San Francisco Redevelopment Agency

DRAFT 9-8-10
SFRA COMMENTS 10-8-10
Navy Redline 11-19-10

SSPORTS	Supervisor of Shipbuilding Conversion and Repair, Portsmouth, Virginia, Environmental Detachment
TtFW	Tetra Tech FW Inc.
VOC	Volatile organic compound

DRAFT 9-8-10
SFRA COMMENTS 10-8-10
Navy Redline 11-19-10

ATTACHMENT 1

Environmental Work Instruction EVR.4, Implementing and Maintaining the CERCLA
Administrative Record and Compendium at NAVFAC Southwest

**Navy Draft
HPS.FFA Amendment#3.2.doc
23 Nov 10**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
AND THE
STATE OF CALIFORNIA
AND THE
DEPARTMENT OF THE NAVY**

IN THE MATTER OF:)	
)	
U. S.)	
Department of the Navy)	FEDERAL FACILITY AGREEMENT
Naval Station)	CERCLA Section 120
Treasure Island -Hunters)	
Point Annex)	AMENDMENT NO. 1 RELATED TO EARLY TRANSFER PROPERTY REFERENCED IN FOSET 1

WHEREAS, on January 22, 1992, the Environmental Protection Agency (“EPA”), State of California Department of Toxic Substances Control (“DTSC”), San Francisco Regional Water Quality Control Board (“RWQCB”), and the Department of the Navy (“Navy”) entered into a Federal Facility Agreement (“the 1992 FFA”) requiring the Navy to identify, perform and complete all necessary response actions at the former Naval Station Treasure Island –Hunters Point Annex (“Hunters Point Naval Shipyard” or “HPNS”) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”); and

WHEREAS, the Federal Government, for and on behalf of the citizens of the United States of America, acts as the steward of certain real property on which it operates and maintains military facilities necessary for the defense of the United States of America. Certain military facilities are no longer required for that mission, and, in accordance with various base closure statutory authorities, the Department of Defense (“DOD”) closed and plans to dispose of real and personal property at those facilities; and.

WHEREAS, the former HPNS was selected in 1991 for Base Realignment and Closure; and

WHEREAS, the Navy is authorized to dispose of real and personal property on HPNS, to the City of San Francisco or to a local reuse organization approved by the City, in accordance with Section 2824 (a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended by Section 2834 of the National Defense Authorization Action Act for Fiscal Year 1994 (Public Law 103-160). The San Francisco Redevelopment Agency ("SFRA") is a local reuse organization approved by the City of San Francisco to accept conveyance of HPNS property in accordance with the authorities set out above; and

WHEREAS, the Navy and SFRA did execute and enter into that certain *Conveyance Agreement Between the United States of America, Acting by and through the Secretary of the Navy, and the San Francisco Redevelopment Agency for the Conveyance of Hunters Point Naval Shipyard*, dated March 31, 2004 ("Conveyance Agreement"); and

WHEREAS, the SFRA has requested an early transfer of HPNS Parcel B, with the exception of IR Sites 7 and 18 and the radiologically-impacted area around Building 140, and HPNS Parcel G as described in the Finding of Suitability for Early Transfer, Former Hunters Point Shipyard, California ("FOSET") within the Hunters Point Shipyard Superfund Site, which will be referred to as the "Early Transfer Property"; and

WHEREAS, the Navy and SFRA have entered into an Early Transfer Cooperative Agreement ("ETCA") as a vehicle for the Navy to fund SFRA to complete any CERCLA response actions and to perform associated Long Term Obligations on the Early Transfer Property necessary to protect human health and the environment and to facilitate reuse and to commence with redevelopment; and

WHEREAS, EPA Region IX, DTSC and RWQCB have entered into an Administrative Order on Consent ("AOC") with SFRA and HPS Development Co., LP ("AOC respondents") which provides for the completion by the AOC respondents of CERCLA response actions and performance by the AOC respondents of associated Long Term Obligations on the Early Transfer Property for the protection of human health and the environment; and

WHEREAS, the Navy has prepared a Covenant Deferral Request requesting that the Representative of the EPA Administrator approve the Early Transfer, with the concurrence of the Governor of California, in accordance with CERCLA Section 120(h)(3)(C)(i)(I)-(IV) inclusive, which will demonstrate that the Early Transfer

Property is suitable for transfer prior to the completion of all necessary response actions and for the reuse intended by the transferee; and

WHEREAS, the proposed CERCLA covenant deferral on the Early Transfer Property will be based upon land use restrictions to be included in the federal deed and the state covenant to restrict use of property (“CRUP”); and

WHEREAS, SFRA will perform work pursuant to the ETCA and the AOC or a related Operations and Maintenance Agreement with DTSC, certain Navy obligations under the 1992 FFA as to the Early Transfer Property should be suspended, revised, or otherwise changed as set forth in this Amendment; and

THEREFORE, based on the information available to the undersigned Parties on the effective date of this Amendment to the 1992 FFA, and without trial or adjudication of any issues of fact or law, and in accordance with Section 29 (“AMENDMENT OR MODIFICATION OF AGREEMENT”) of the 1992 FFA, the Parties agree to amend the 1992 FFA, as provided below. All terms and conditions of the 1992 FFA remain in effect and in full force regarding all property within the Hunters Point Shipyard Superfund Site, including the Early Transfer Property, unless expressly suspended or revised in this Amendment.

- I. Section 3 (DEFINITIONS) of the 1992 FFA is amended to add Section 3.2 consisting of the following definitions:
 - A. The term "Area Covered by Environmental Services" or "ACES" means that area identified on the map in Appendix 2, and specifically excludes IR Sites 7/18 and the radiologically-impacted area around Building 140.
 - B. The terms “Administrative Order on Consent” or “AOC” means the Administrative Order on Consent (CERCLA Docket No. xxxx) between EPA, DTSC, and the RWQCB and the AOC respondents that provides for the completion by the AOC respondents of response actions and associated Long Term Obligations required by the Parcel B and G Records of Decision (“RODs”) on the Early Transfer Property for the protection of human health and the environment; and
 - C. The terms “Amendment No. 1 to the 1992 FFA” or “Amendment”, or “FFA Amendment” mean this document which supplements and, in relation to the Early Transfer Property only, revises the 1992 FFA, between EPA, the Navy, DTSC, and RWQCB.
 - D. “Certification of Completion of Remedial Action” shall mean a certification issued for a ROD Implementation Area after approval of a RACR pursuant to

Paragraph 53 of the AOC.

- E. The term “DTSC” means the California Department of Toxic Substances Control,
- F. The term “Environmental Condition(s)” means a discharge, release, or threatened discharge or release into the environment of a hazardous substance, waste, oil, or petroleum product within the scope of any of the following:
- i. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9601 et seq.;
 - ii. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq.;
 - iii. California Hazardous Waste Control Act (California Health and Safety Code Sections §25100 et seq.);
 - iv. California Hazardous Substances Account Act (California Health and Safety Code Sections §25300 et seq.);
 - v. Porter-Cologne Water Quality Control Act (California Water Code §13000 et seq.);
 - vi. Or similar federal or state environmental law.
- G. The term "Environmental Insurance Policies" means the environmental insurance policies which the SFRA procures in accordance with the requirements of Section 712.e of the ETCA.
- H. The term “Environmental Services” means performance of the activities necessary to achieve Regulatory Closure and comply with Long-Term Obligations including but not limited to those required to comply with the RODs and associated Remedial Design reports and CERCLA, consistent with the National Oil and Hazardous Substances Pollution Control Plan (“NCP”)(40 CFR Part 300), with respect to (i) Known Conditions and Unknown Conditions Discovered During the Course of Remediation even if the funds provided under this Agreement, and any insurance proceeds from the Environmental Insurance Policies have been exhausted and even if the term of the Environmental Insurance Policies has expired; and (ii) Unknown Conditions Discovered Outside the Course of Remediation, but only to the extent such activities are funded by the Environmental Insurance Policies or to the extent such funding is unavailable as a result of the failure of SFRA or a named insured (other than the Navy) to comply with the requirements of the Environmental Insurance Policies. The term “Environmental Services” does not include, except as specifically provided herein, the performance of any activities related to the following: Navy Retained

Conditions; Ineligible Work; or Special Exclusions.

- I. The term "ETCA" means the Early Transfer Cooperative Agreement, effective xxxx, entered into by the Navy and SFSRA pursuant to title 32, Code of Federal Regulations, Parts 21 through 33 (32 CFR Parts 21 through 33).
- J. The term "FFA" or "1992 FFA" means the Federal Facility Agreement and all Appendices incorporated into the Agreement for Hunters Point Shipyard that became effective on January 22, 1992, between EPA, the Navy, DTSC, and RWQCB; and
- K. The term "Ineligible Work" means the performance of any or more of the following work:
 - i. Cleanup of: (1) lead based paint ("LBP") and asbestos containing materials ("ACM") incorporated into building materials in their original location and not previously demolished by the Navy or its contractors or (2) lead in soil resulting from natural weathering LBP from buildings and structures.
 - ii. Cleanup of pesticides and herbicides applied in accordance with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its predecessors including, but not limited to, chlordane properly applied as a termiticide to presently existing wooden structures, their foundations, and underlying soils.
 - iii. Additional remediation necessary to implement a change in land use from the land uses set forth in the 1997 Reuse Plan.
 - iv. Management and disposal of construction and demolition debris except to the extent such debris is generated in the course of conducting the Environmental Services, such as the demolition of hardscape necessary to install a monitoring well.
 - v. Clean up of contaminants within existing buildings and structures, that have not been released into the environment; except for removal of liquids, solids, gases, sediments, and/or sludges from and including oil/water separators and other equipment and containment vessels within or beneath structures to the extent the equipment and vessels could not have been reasonably discovered by visual inspection during a pre-conveyance walk-through in which both parties participated.
 - vi. Any activity, including management and offsite disposal of excavated contaminated soil or solid waste, associated with disturbing or altering a cover, cap or other component of an environmental remedy installed pursuant to the AOC, except to the extent such disturbance or alternation is necessary to comply with the AOC to address an environmental condition other than a condition that the disturbed or altered remedy component was designed to address.
 - vii. Non-cleanup environmental compliance activities relating to

redevelopment/construction following conveyance (e.g., compliance with air quality permit requirements for control of fugitive dust emissions that are not contaminated with hazardous substances or petroleum and the National Pollutant Discharge Elimination System ("NPDES") stormwater discharge permit requirements regulating excavation/disturbance of soil that is not contaminated with hazardous substances or petroleum).

- viii. Any other work or activity that is not related to the performance of the Environmental Services.
- ix. All Regulatory Enforcement Activities.
- x. Cleanup that is required as a result of a violation of: (i) use restrictions by the SFRA, its successors and assigns, or (ii) any land use restriction, groundwater restriction, deed covenant or IC applicable to the ACES.
- xi. Cleanup arising from the failure of the SFRA, its successors and assigns, to operate or maintain a remedy as required by the Petroleum Corrective Action Plan ("PCAP") or USEPA through the CERCLA RODs, AOC, Land Use Control Remedial Design Reports ("LUC RD"), Risk Management Plan ("RMP") and/or Operation and Maintenance Plan ("OMP").

L. The term "Institutional Controls" means non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination (including but not limited to Munitions and Explosives of Concern ("MEC")) and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

M. The term "Known Condition" means one or more specified chemicals of concern in a specified medium (e.g., soil or groundwater) identified in the CERCLA RODs as requiring remedial action.

N. The term "Land Use Control Remedial Design" ("LUC RD") means the LUC RD report(s) prepared as part of CERCLA Remedial Design documentation to refine institutional controls and specify procedures and responsibilities for their implementation.

O. The term "Long Term Obligations" means any long-term review, monitoring, reporting and institutional control ("IC") and operation and maintenance requirements that are required to be performed subsequent to and as a condition of the issuance of a Certification of Completion of Remedial Action has been

approved pursuant to the AOC or a related Operations and Maintenance Agreement with DTSC including but not limited to requirements associated with or in furtherance of the CERCLA RODs, Remedial Design reports, and Operation and Maintenance reports reviewed and approved pursuant to the FFA, and including providing existing records and reports for the Navy's preparation of the CERCLA five year reviews for years 2013 and 2018 and SFRA preparation of the CERCLA five-year reviews thereafter. Long-Term Obligations do not include obligations attributable to NRCs or Special Exclusions.

- P. The term "Military Munitions" means all ammunition products and components produced or used by or for DOD or the United States Armed Services for national defense and security, including military munitions under the control of DOD, the United States Coast Guard, the United States Department of Energy ("DOE") and National Guard personnel. The term "Military Munitions" includes but is not limited to confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term "Military Munitions" does not include wholly inert items and non-standard explosive devices made from either military or non-military materials by personnel unrelated to DOD. However, the term "Military Munitions" does include non-nuclear components of nuclear devices managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§2011 et seq., have been completed.
- Q. The term "Navy Remedy Failure" means any circumstance, not due to negligence by SFRA, where a remedy selected in the CERCLA RODs or subsequent CERCLA decision document issued by the Navy has been implemented by SFRA in accordance with the RODs and approved remedial design documents but is determined by EPA not to have achieved the ROD's remedial action objectives. "Navy Remedy Failure" does not include volatile organic compound (VOC) vapor migration and accumulation caused by redevelopment activities.
- R. The term "Navy Retained Conditions" means Unexploded Ordnance: Military Munitions; chemical, radiological, or biological warfare agents; and Radiological Materials. The term Navy Retained Conditions does not include Ineligible Work as defined herein.

- S. The term "Operation and Maintenance" or "O & M" means all activities required to maintain the effectiveness of the Remedial Action(s) subsequent to and as a condition of the issuance of a Certification of Completion of Remedial Action.
- T. The term "Operation and Maintenance Plan" or "O&M Plan" means that certain plan or plans entered into between the SFRA and Department of Toxic Substances Control to address long-term O&M following issuance of a Certificatin of Completion of Remedial Action.
- U. The term "Property Transfer" means the transfer of the ACES by deed from the Navy to SFRA.
- V. The term "RACR" means a report prepared pursuant to the *DoD/EPA Joint Guidance, Remedial Streamlined Site Closeout and NPL Deletion Process for DoD Facilities* demonstrating that (1) the remedy at a ROD Implementation Area has been fully performed, including recordation of a modification to the LUC(s), if required by EPA; (2) initial implementation of any other institutional controls called for in the ROD, and (3) the Remedial Action Objectives have been attained.
- W. The term "Radiological Materials" means solid, liquid, or gaseous material derived from U.S. Government activities, that contains radionuclides regulated by the Atomic Energy Act of 1954, as amended, and those materials containing radionuclides defined as being derived from the Navy's work on the following: nuclear propulsion plants for ships and submarines; nuclear devices and nuclear components thereof, and; radiographic and instrument calibration sources and various instrumentation and radioluminescent products manufactured for military applications. The term "Radiological Materials" does not include products commonly used in non-military applications such as radioluminescent signs, and household smoke detector components that do not require special handling or special treatment as a result of the materials containing radionuclides other than being handled as household hazardous waste.
- X. The term "Records of Decision" ('ROD(s)') for Parcels B and G" means that certain CERCLA Amended Record of Decision for Parcel B dated January 14, 2009, and that certain CERCLA Record of Decision for Parcel G dated February 18, 2009, including all attachments thereto.
- Y. The term "Regulatory Closure" means Environmental Regulatory Agency approval by issuance of one or more Certificates of Completion encompassing the entire ACES pursuant to the procedures set forth in the AOC.
- Z. The term "Remedial Action" means those activities, except for Operation and Maintenance, to be undertaken by the respondents to implement each of the RODs in accordance with the SOW and the Remedial Design and Remedial Action Work Plans and other plans approved by EPA, after consultation with DTSC and RWQCB.
- AA. The term "Remedial Action Objective" means the numeric or narrative clean-up standard specifically designated in a ROD as the "remedial action objective"

for a particular remedy selected in the ROD.

- BB. The term "Remedial Action Work Plan" means the document(s) developed pursuant to Paragraph 22 of the AOC and approved or modified by EPA, after consultation with DTSC and RWQCB, and any amendments thereto.
- CC. The term "Remedial Designs" means that certain Remedial Design for Parcel B dated ____ and that certain Remedial Design for Parcel G dated ____.
- DD. The term "Respondents" means the respondents under the AOC (San Francisco Redevelopment Agency ("SFRA") and CP/HPS Development Co. LP (referred to individually as "respondent" and collectively as "respondents")).
- EE. The term "ROD Implementation Area" means the portions of Parcels B and G identified in Exhibit _____, attached hereto, as that Exhibit may be amended from time to time with the approval of EPA, in consultation with DTSC and the RWQCB, which form the geographic units for which respondents will seek certification of completion pursuant to Section XVII of the AOC.
- FF. The term "RWQCB" means the Regional Water Quality Control Board, San Francisco Bay Region, and any successor agencies of the State.
- GG. The term "SFRA" means the San Francisco Redevelopment Agency, a public body, corporate and politic, organized and existing under the Community Redevelopment Law of the State of California and a local reuse organization approved by the City of San Francisco to accept conveyance of HPNS property in accordance with Section 2824(a) of Public Law 101-510 as amended.
- HH. The term "Special Exclusions" means:
- i. Evaluating the need for amendments to and Explanations of Significant Differences (ESDs) from the Parcel B and G RODs and preparing and issuing such documents; and
 - ii. Conducting any additional remedial action required by such amendments to and Explanations of Significant Differences (ESDs) from the Parcel B and G RODs except to the extent such activities and associated costs are funded by the Environmental Insurance Policies, or except to the extent attributable to any of the following:
 1. the negligence of the SFRA or any party acting on its behalf, or any failure to perform Long-Term Obligations, , and
 2. requests by the SFRA or other party acting on behalf of the SFRA for modification of a remedial action selected in the Parcels B and G RODs that is not required as a result of a Navy Remedy Failure, or or from the discovery of a Navy Retained Condition or one of the other Special Exclusions identified in this definition, and.
 - iii. The performance of CERCLA five-year reviews for years 2013 and 2018 for remedies selected in the Parcel B and G RODs; and
 - iv. Activities and associated costs necessary to address any Environmental Condition migrating onto Parcel B from IR Site 25 in Parcel C or an Environmental Condition migrating onto Parcel G from Building 406 (also

known as the IR Site 36 groundwater contamination/treatment area) in Parcel E; and

- v. Activities and associated costs, other than those required to implement the portions of the CERCLA RODs requiring the rebuilding of portions of the revetment wall on the Parcel B shoreline, necessary to address any Environmental Condition that has migrated onto Parcel F from Parcel B, except to the extent attributable to any negligence of the SFRA or any party acting on its behalf; and
- vi. Any activity and associated cost related to an Unknown Condition Discovered Outside the Course of Remediation that is not funded by the Environmental Insurance Policies provided the unavailability of insurance funds is not the result of the failure of SFRA or a named insured (other than the Navy) to comply with the requirements of the Environmental Insurance Policies.

II. The term "State" means the State of California.

JJ. The term "Unexploded Ordnance" or "UXO" means Military Munitions that have been fired, dropped, launched, projected, or otherwise placed, abandoned or disposed of in such manner as to constitute a hazard to military or non-military operations, installations, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

KK. The term "Unknown Conditions Discovered During the Course of Remediation" means Environmental Conditions that are discovered in the course of implementing the requirements of the CERCLA RODs or the AOC in a portion of the ACES that has not achieved Regulatory Closure, and are not Known Conditions, Special Exclusions, or Navy Retained Conditions. "Discovered in the Course of Remediation" shall include environmental conditions discovered during the "cut and fill" site preparation activities prior to installation of the initial remedial cover and environmental conditions discovered by disturbing or altering a cover, cap or other component of an environmental remedy as defined in subsection (vi) of the definition of "Ineligible Work",

LL. The term "Unknown Conditions Discovered Outside the Course of Remediation" means Environmental Conditions other than Known Conditions and Unknown Conditions Discovered During the Course of Remediation.

MM. The term "United States" means the United States of America.

II. The following obligations and rights of the Navy in respect to the Early Transfer Property shall be suspended or otherwise changed as provided in this Amendment: Section 6 ("WORK TO BE PERFORMED"), Section 7 (CONSULTATION), Section 8 (DEADLINES), Section 9 (EXTENSIONS), Section 11 (EMERGENCIES AND REMOVALS), Section 12 (DISPUTE RESOLUTION), Section 31 (COVENANT NOT TO SUE AND RESERVATION OF RIGHTS), Section 36 (EFFECTIVE DATE AND PUBLIC COMMENT), provided however, that none of these Sections shall be suspended with respect to any Navy Retained Conditions or Special Exclusions upon the Early Transfer Property or other parcels of the former Hunters Point Shipyard installation.

III. Section 6 (WORK TO BE PERFORMED) of the 1992 FFA is amended to add the following sections as follows:

6.5 ASSUMPTION OF WORK ON EARLY TRANSFER PROPERTY BY AOC RESPONDENTS

6.5.1 Under the terms of the ETCA, the Navy has agreed to provide funds to SFRA in exchange for SFRA's agreement to assume the Navy's responsibilities and complete Environmental Services for the ACES pursuant to the ETCA. In furtherance of the agreements reached between the Navy and SFRA in the ETCA, the AOC respondents' commitments contained in the AOC, and respondent's future commitments in the O&M Agreement, EPA, DTSC, and RWQCB agree that the AOC and O&M Agreement respondents assume responsibility for the Environmental Services pursuant to the ETCA and AOC.

6.5.2. The Navy agrees that it will conduct necessary response actions and associated Long Term Obligations addressing Navy Retained Conditions and Special Exclusions. The Navy will notify EPA, DTSC, and RWQCB upon receipt of a claim by SFRA that an environmental condition that it has encountered is a Navy Retained Condition or Special Exclusion.

((Reserved "Placeholder")): The dispute resolution language at the end of this paragraph has been deleted. The Navy is currently engaged in internal deliberations regarding potential additional language to include in this paragraph to address dispute resolution. The Navy will provide proposed language in a future draft.))

- 6.5.3. The Navy acknowledges its ultimate liability under CERCLA to complete all necessary response actions at the Early Transfer Property, in accordance with CERCLA. The parties acknowledge that the AOC respondents shall perform response actions for the cleanup of the Early Transfer Property pursuant to the ETCA and the AOC.
- 6.5.4. The Navy's FFA obligations suspended under Section II of this Amendment shall resume for HPNS Parcel B, with the exception of IR Sites 7 and 18 and the radiologically-impacted area around Building 140, and HPNS Parcel G upon the date of termination of relevant ETCA provisions if prior to the end of the ETCA term.
- 6.5.5. EPA, in consultation with DTSC, and RWQCB, shall take appropriate actions pursuant to the terms of the AOC, which may include assessing stipulated penalties, to enforce the AOC against the respondent(s) prior to issuing a Notice of Intent to Find Default under the AOC relating to a particular parcel or site. EPA, DTSC, and RWQCB shall: 1) consult with the Navy throughout any AOC dispute resolution process relating to a Notice of Intent to Find Default against the AOC respondents for all or a portion of a particular parcel or site, 2) provide the Navy with notice and the opportunity to participate in all meetings between the regulators and the AOC respondents in the dispute resolution process, 3) provide the Navy with copies of all documentation and correspondence relating to the AOC dispute resolution process, and 4) provide the Navy with notice and timely opportunities to submit written comments to the parties in the course of the AOC dispute resolution process. The Navy's FFA obligations relating to the particular parcel or site shall remain suspended until the AOC dispute resolution procedure is completed and a Finding of Default has been issued under the AOC. The Navy's suspended FFA obligations shall resume upon the Navy's receipt of a Finding of Default
- 6.5.6. In the event of a final Finding of Default, the Navy shall complete CERCLA response actions on the Early Transfer Property for the particular parcel or site subject to the Finding of Default and perform associated Long Term Obligations for all response action decisions selected before Navy resumption of the work. Notwithstanding the above, the Navy may, within 30 working days of the issuance of a Finding of Default propose to EPA, DTSC, and the RWQCB modifications to the relevant Parcel B and G Remedial Action (RA) Work Plan(s) prepared by the AOC respondents. To the extent that EPA, DTSC, and RWQCB and the Navy do not agree with respect to such a Navy proposal, any Party may initiate Dispute

Resolution pursuant to Section 12 of the Amended FFA.

6.5.7. Within 30 working days after 1) the issuance of a final Finding of Default or 2) final resolution of a Navy proposal to modify relevant Parcel B and G RA Work Plans as described in subsection 6.5.6 above, whichever comes later, the Navy will provide EPA, DTSC, and the RWQCB with its schedule for the implementation of all response actions remaining to be performed on the Early Transfer Property. If the Parties fail to agree within 45 working days from receipt of the proposed schedule for implementation, the matter shall immediately be submitted for dispute resolution pursuant to Section 12 of the Amended FFA.

6.5.8 Notices/Management Group Meetings

Notice of activities under this FFA Amendment shall be provided to the following addresses:

(1) For the Navy

Keith Forman
Hunters Point Shipyard BRAC Environmental Coordinator
BRAC Program Management Office West
1455 Frazee Road, Suite 900
San Diego, CA 92108-4310
Tel (619)-532-0913
Fax: (619) 532-xxxx

(2) For EPA:

Assistant Director
Federal Facilities and Site Clean-up Branch
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105
Tel (415) 972 Fax (415) 947 3520

EPA Project Coordinator
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street

San Francisco, CA 94105

Tel (415) 972

Fax (415) 947 3520

(3) For DTSC:

Office of Military Facilities
Department of Toxic Substance
8800 Cal Center Drive
Sacramento, CA 98526-3200
Tel (916) 255 3732
Fax (916) 255 3734

Project Coordinator
DTSC
Berkeley, Ca
Tel

(4) For RWQCB:

Project Coordinator

6.5.9. Nothing in this Section shall be construed to interfere with or alter the internal organization or procedures of a Party, including, without limitation, signature authority.

IV. Section 7 (CONSULTATION: REVIEW AND COMMENT PROCESS FOR DRAFT AND FINAL DOCUMENTS) is suspended in regards to the Navy's consultation responsibilities for the Early Transfer Property except for the following subsections:

7.11 EPA, DTSC and RWQCB shall integrate the Navy into the AOC and O&M Agreement regulatory consultation and concurrence processes in a manner that is consistent with terms and conditions of the AOC and O&M Agreement and the Navy review, comment, and concurrence requirements of the ETCA and its attached Technical Specification and Requirements Statement ("TSRS"). EPA, DTSC and RWQCB shall ensure that copies of all relevant documents, deliverables, reports, correspondence, and other necessary information developed and exchanged by EPA, DTSC, RWQCB, and the AOC and O&M Agreement respondents will be provided to the Navy in a timely manner.

- 7.12 EPA, DTSC, and RWQCB will provide copies of their comments on CERCLA primary and secondary documents to the Navy at the same time that they provide the comments to the AOC and O&M Agreement respondents.

V. Section 11 (EMERGENCIES AND REMOVALS) is amended to add the following subsection with respect to the Early Transfer Property:

- 11.7 SFRA and CP/HPS Development Co., LP, under the terms of the ETCA, AOC, and O&M Agreement, shall be responsible for providing notice to the Navy, EPA, DTSC, and RWQCB upon their discovery or awareness of a release of a hazardous substance or an emergency situation. Nonetheless, to the extent that Navy personnel and/or its contractors become aware of an emergency or other situation that may present an immediate endangerment to public health, welfare or the environment at or near the Early Transfer Property, the Navy shall notify EPA, RWQCB and DTSC in accordance with Section 11.1 of the 1992 FFA. Upon the Navy's discovery, or after receipt of notice from SFRA, HPS Development Co., LP, EPA or DTSC of such information, the Navy shall use its best efforts to contact and confer with SFRA and ensure that either the Navy or SFRA will conduct any emergency response action that the Navy determines is necessary pursuant to Section 11, CERCLA, and Executive Order 12580 and consistent with the NCP. For those situations that involve and/or pertain to a Navy Retained Condition or Special Exclusion, the Navy will take on all responsibilities outlined in Sections 11.1 to 11.6 of the 1992 FFA upon the Navy's discovery, or after receipt of notice from SFRA, HPS Development Co., LP, EPA, DTSC, or RWQCB, whichever occurs first. If the Navy and SFRA cannot agree in a timely manner (taking into consideration the exigency of the risk posed by the release of hazardous substances) as to who is responsible for responding to an emergency situation, the Navy shall be responsible for addressing the release of hazardous substances as provided in Section 11 of the FFA, CERCLA, and Executive Order 12580 and consistent with the NCP.

VI. Section 12 (DISPUTE RESOLUTION) is amended to add the following subsections:

12.14

((Reserved "Placeholder"): The Navy is currently engaged in internal deliberations regarding potential additional language to include in this paragraph to address dispute resolution. The Navy will provide proposed

language in a future draft.))

Nothing herein shall be construed to affect or impair the Navy's or respondent's rights to pursue dispute resolution concerning whether certain work or environmental conditions are within the scope of the respondent's obligations under the ETCA pursuant to Section 1001 of the ETCA and 32 CFR Section 22.815. Nothing herein shall be construed to require obligations or payments by the Navy in violation of the Anti-Deficiency Act (31 U.S.C. Section 1341).

12.15 Section 12 of the 1992 FFA remains in effect relative to violations of the 1992 FFA and this Amendment relating to Navy Retained Conditions.

12.16 In the event of a default under the AOC, EPA will provide a notice to the Navy by sending a copy of the Notice of Intent to Default provided for in the AOC. The Navy may submit comments on the Notice within 45 calendar days of its receipt for EPA to consider during discussions and/or a dispute with SFRA.

VII. Section 31 (COVENANT NOT TO SUE AND RESERVATION OF RIGHTS) is amended to add the following subsection related exclusively to the Early Transfer Property:

31.3. In consideration of the Navy's compliance with this Amendment and the 1992 FFA, and based on the information known to the Parties or reasonably available on the effective date of this Amendment, EPA, the Navy, DTSC, and RWQCB agree that compliance with this Amendment and the 1992 FFA shall stand in lieu of any administrative, legal, and equitable remedies against the Navy available to them regarding the releases or threatened releases of hazardous substances including hazardous wastes, pollutants or contaminants at the Early Transfer Property which are the subject of the AOC or ETCA.

VIII. Section 36 (EFFECTIVE DATE AND PUBLIC COMMENT) is amended to add the following subsection applicable on to the Early Transfer Property:

36.4 The FFA Amendment becomes effective after all Parties have signed this Amendment, and upon approval of the Covenant Deferral Request by EPA, with the concurrence of the State. When these conditions are met, EPA shall promptly notify all Parties in writing of the effective date.

IX. Section 39 (INSTITUTIONAL CONTROLS) shall be added to the 1992 FFA.

A. 39.1. As a condition to deferring the CERCLA Covenant, land, water, and resource use restrictions required by the Parcels B and G RODs will be addressed as provided in those RODs, the Parcels B and G LUC RDs, and the FOSET. The Navy and DTSC will establish the land, water, and resource use restrictions on the Early Transfer Property, by entering into a Covenant to Restrict the Use of Property ("CRUP"), prior to the conveyance of the Early Transfer Property. The restrictions contained in the CRUP also will be included in the federal quitclaim deed(s) transferring the Early Transfer Property to SFRA.

B. 39.2. These restrictions in the CRUP and the federal deed(s) will be placed over the property as a condition of deferring the CERCLA covenant in order to ensure the protection of human health and the environment prior to completing all remedial actions. They shall also serve as key components of the remedial action required by the RODs for Parcels B and G. The Navy shall report any activities prohibited by the CRUP and federal deed known by it or reported to it and take appropriate action as provided in the Parcels B and G LUC RDs.

X. Section 40 shall be added to the 1992 FFA:

40. SELECTION OF RESPONSE ACTIONS

40.1 Notwithstanding that the AOC respondents have assumed certain Navy responsibilities under the ETCA, consistent with Sections 7, 8, 9, and 12 above, the Navy and EPA shall be responsible for selecting any necessary CERCLA response actions required in addition to those required by the RODs for Parcels B and G.

XI. Section 41 shall be added to the 1992 FFA:

41. EFFECT OF AMENDMENT NO.1 TO THE 1992 FFA

41.1 Nothing in this Amendment to the 1992 FFA shall modify any term or condition of the 1992 FFA unless expressly set forth herein. Nothing in this Amendment creates any third party rights.

41.2 Nothing in this Amendment to the 1992 FFA shall require EPA or the State to perform response actions at the Early Transfer Property.

41.3 Nothing in this Amendment to the 1992 FFA shall affect whatever ability the Navy has to contract or agree with third parties to conduct response actions for Navy Retained Conditions or Special Exclusions.

41.4 Nothing in this Amendment to the 1992 FFA will be precedent for agreements concerning any other Superfund Site.

XII. Section 42 shall be added to the 1992 FFA:

42. NAVY NOTICE AND RESPONSIBILITIES IN EVENT OF MATERIAL BREACH BY SFRA OR HPS DEVELOPMENT CO., LP, OR ESCA DISPUTE.

42.1 The Navy shall notify EPA in writing within 15 calendar days, with a copy to DTSC and RWQCB, upon learning of any information that may constitute a material breach by SFRA OR HPS Development Co., LP, under the ETCA, or within 15 calendar days of a dispute arising under the ETCA.

AUTHORIZED SIGNATURES

Each of the undersigned representatives of the Parties certifies that he or she is fully authorized by the entity he or she represents to enter into the terms of this First Amendment to the 1992 FFA and to legally bind such entity to this First Amendment to the 1992 FFA.

IT IS SO AGREED:

by

UNITED STATES DEPARTMENT OF NAVY

Deputy Assistant Secretary of the Navy (Environment)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Deputy Regional Administrator
U.S. Environmental Protection Agency Region IX

CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Office of Military Facilities
California Department of Toxic Substances Control

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

Executive Officer
California Regional Water Quality Control Board

EPA revision October 2010

Navy Comments, 23 Nov 10
HPS.AOC#2.1.doc

IN THE MATTER OF
FORMER HUNTER'S POINT NAVAL SHIPYARD

Respondents

San Francisco Redevelopment Agency and CP/HPS Development Co., LP

ADMINISTRATIVE ORDER ON CONSENT
FOR RD/RA FOR CLEANUP OF PORTIONS OF
THE FORMER HUNTER'S POINT NAVAL SHIPYARD
U.S. EPA Region 9

CERCLA Docket No. 2010-14
Proceeding under Sections 104, 106 and 122 of the Comprehensive Environmental Response,
Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606, and 9622.

DRAFT FOR DISCUSSION PURPOSES ONLY DO NOT CITE, QUOTE OR RELEASE

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I. JURISDICTION

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the California Department of Toxic Substances Control ("DTSC"), the California Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB"), and the San Francisco Redevelopment Agency ("SFRA") and CP/HPS Development Co. LP (referred to individually as "Respondent" and collectively as "Respondents"). The Order concerns the performance of one or more remedial actions ("RD/RA") for certain hazardous substances, pollutants, or contaminants present on Parcels G, and portions of Parcel B at the former Hunter's Point Naval Shipyard ("HPNS") located at San Francisco ("Site"), described in Appendix A and depicted generally on the map attached as Appendix B) and the reimbursement for future response costs incurred by EPA, DTSC and RWQCB in connection with such CERCLA response actions.

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further redelegated by the Regional Administrator of EPA Region 9 to the Superfund Branch Chief (now referred to as Assistant Division Director) by Regional Delegation R9 1290.15, dated September 29, 1997. DTSC and the RWQCB sign this Order pursuant to relevant provisions of CERCLA Section 120 regarding state participation in federal facility cleanups, and Section 121(f), 42 U.S.C. §§ 9620 and 9621(f), and applicable provisions of 40 C.F.R. Subpart F, and the California Health and Safety Code, Division 20, Chapters 6.5, 6.67, 6.75, and 6.8, and the California Water Code, Division 7. The United States Department of Justice is approving and signing this Order pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. Pursuant to that certain Early Transfer Cooperative Agreement ("ETCA") Covering Portions of the Hunters Point Naval Shipyard Between the United States of America Department of the Navy ("Navy") and the SFRA dated ____, and pursuant to that certain Remediation Agreement dated ____ between the SFRA and HPS Development Co., Respondents have agreed to undertake the cleanup of a portion of the former Hunter's Point Naval Shipyard (Environmental Services), which is more specifically depicted in Appendix A to this Order. This cleanup is currently being undertaken by the U.S. Navy pursuant to the terms of the Hunter's Point Naval Shipyard Federal Facilities Agreement, dated January 22, 1992 ("FFA"). The FFA is being amended to provide in general that the obligations of the Navy to conduct that portion of the cleanup of the Site that SFRA has agreed to perform under the ETCA and this Order and any Operations and Maintenance Agreement ("O&M Agreement") entered into by DTSC and the Respondents that supersedes the O&M provisions of this Order as provided in Paragraph 6 below will be suspended so long as the Respondents comply

with all requirements of this Order and other conditions described in the Amended FFA are met. In the event that EPA, in consultation with DTSC and RWQCB, determines that the Respondents are in Default as defined in Section XXXII of this Order or the O&M Agreement entered into by DTSC and the Respondents, the responsibility for any remaining response actions shall revert to the Navy in accordance with the terms and conditions of the Amended FFA.

4. Respondents represent that they are each bona fide prospective purchasers (“BFPP”) with respect to the Site as defined by section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that they have and will continue to comply with section 101(40) during their ownership of the Site, and thus qualify for the protection from liability under CERCLA set forth in section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Site. In view, however, of the complex nature and significant extent of the Work to be performed by Respondents at the Site, and the risk of claims under CERCLA being asserted against Respondents notwithstanding section 107(r)(1) as a consequence of Respondents’ activities at the Site pursuant to this Order, one of the purposes of this Order is to resolve, subject to the reservations and limitations contained in Section XXVI (Reservations of Rights by EPA), any potential liability of Respondents under CERCLA for Existing Contamination, as defined in Paragraph 13 below.

5. EPA, DTSC, RWQCB and Respondents recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Order do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the Findings of Fact, and Conclusions of Law and Determinations in Sections V and VI of this Order. Respondents agree to comply with and be bound by the terms of this Order and further agree that they will not contest the basis or validity of this Order or its terms.

6. This Order shall remain in effect until all Environmental Services required by this Order have been completed or the conditions set forth below and in Section XXXIX have been satisfied. If DTSC and the Respondents enter into an Operations and Maintenance Agreement (“O&M Agreement”) with DTSC that has been concurred upon the EPA and the Navy, the O&M provisions of this Order may be superseded and terminated after the Respondents have completed the initial development cover for all ROD Implementation Areas and passage of the second anniversary of EPA’s Certification of Completion of the Remedial Action for the final ROD Implementation Area pursuant to Paragraph 53. The O&M Agreement shall be in the form attached to this Order as Exhibit xxx, and shall include but not be limited to: 1) identical scope of work and terms and conditions relating to O&M requirements as set forth in this Order and the ETCA and 2) equivalent procedures and criteria for addressing non-compliance and default determinations.

II. PARTIES BOUND

7. This Order applies to and is binding upon EPA, DTSC, RWQCB and upon Respondents and their successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter Respondents' responsibilities under this Order, except as provided in Paragraph 20.

8. Each Respondent shall be responsible for carrying out the activities required of it by the Statement of Work and this Order in a timely manner and shall be subject to stipulated penalties for its failure to meet the terms and conditions of this Order. A Respondent may be held responsible for carrying out activities required of the other Respondent under the Scope of Work and this Order, but only after EPA, DTSC and RWQCB have exhausted their remedies under this Order against the non-performing Respondent; except that a Respondent shall respond immediately where EPA determines, in consultation with DTSC and RWQCB, that an immediate response is required to protect human health and the environment. Where this Order specifies that Respondents have a right or duty, but does not specify which respondent has that right, or duty, the Respondents may designate a single Respondent to exercise that right or perform that duty.

9. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order by their contractors, subcontractors and representatives.

10. The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Order and to execute and legally bind Respondents to this Order.

III. STATEMENT OF PURPOSE

11. In entering into this Order, the objectives of EPA, DTSC, RWQCB and Respondents, in addition to the purpose identified in Paragraph 4 above, are: (a) to provide for the construction and implementation of the selected remedial action consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"), including the obligation to implement and maintain institutional controls, including land use covenants, or operation and maintenance at the Site to achieve all applicable or relevant and appropriate requirements not waived ("ARARs"), and other Remedial Action Objectives described in the RODs; (b) to conduct and complete Environmental Services as defined in this Order; (c) to provide for the payment of response and oversight costs incurred by EPA, DTSC and RWQCB with respect to this Order, provided that neither EPA, DTSC, nor the RWQCB will seek reimbursement from Respondents for any response and oversight costs already paid to them from a Department of Defense funding source; and (d) to fulfill a portion of the required assurances under the CERCLA 120(h)(3)(C) covenant deferral process.

12. The Work conducted under this Order is subject to approval by EPA, after consultation with DTSC, RWQCB, and the Navy. For purposes of this Order, consultation with DTSC, RWQCB, and the Navy shall include, but not be limited to, simultaneous receipt by and a reasonable opportunity to review and comment on by DTSC, RWQCB, and the Navy of all documents and deliverables required to be submitted by Respondents under this Order (the reasonable review time for each document/deliverable will be determined by EPA in consultation with DTSC and the RWQCB before or upon receipt of the document/deliverable; opportunity to participate in all meetings among the Parties concerning the Site; and to participate in dispute resolution as provided by Sections XXII and XXIII of this Order. Respondents shall conduct all Work under this Order in compliance with CERCLA, the NCP, and all applicable EPA guidance, policies, and procedures and applicable State law. EPA, DTSC, RWQCB and the Respondents shall integrate the Navy into the regulatory consultation and concurrence processes of the Order and any future O&M Agreement between DTSC and the Respondents superseding the O&M provisions of the Order in a manner that is consistent with the Navy document review, comment, and concurrence requirements of the ETCA and its attached Technical Specification and Requirements Statement ("TSRS"). EPA, DTSC, RWQCB, and the Respondents shall ensure that copies of all relevant documents, deliverables, reports, correspondence, and other necessary information developed and exchanged by EPA, DTSC, RWQCB, and the Respondents will be provided to the Navy in a timely manner and that the Navy will be notified and offered the opportunity to participate in key meetings.

IV. Definitions

13. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Area Covered by Environmental Services" or "ACES" shall mean that area identified on the map in Exhibit xx, and specifically excludes IR Sites 7/18 and the radiologically-impacted area around Building 140.

"Amended FFA" shall mean Amendment No. 1 to the Hunter's Point Naval Shipyard Federal Facilities Agreement, dated _____.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

"Certification of Completion of Remedial Action" shall mean a certification issued for a ROD Implementation Area after approval of a RACR pursuant to Paragraph 53.c or a certification for the entire Site issued pursuant to Paragraph 53.d.

“ (Navy Note: This process does not appear to be critical for purposes of the Order, ETCA and FFA. It is the Navy’s understanding that this definition and Par. 55 will be deleted from the Order.)“Covenant Deferral Request” shall mean the document prepared in accordance with CERCLA Section 120(h)(3)(C), which provides the basis for the deferral by EPA, with the concurrence of the State, of the CERCLA covenant with respect to the Site.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or State or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or State or Federal holiday, the period shall run until the close of business of the next working day.

"DTSC" shall mean the Department of Toxic Substances Control and any successor departments or agencies of the State.

“DTSC Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that DTSC incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, or overseeing this Order including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of participating in community relations meetings, legal or enforcement costs, costs to or implement institutional controls, including land use covenants, or operation and maintenance, including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation, costs for emergency response, or the costs incurred by DTSC in enforcing the terms of the Order, including all costs incurred in connection with Dispute Resolution pursuant to Sections XXII and XXIII in the Order

"Effective Date" shall be the effective date of this Order as provided in Section XXXX.

“Environmental Condition(s)” means a discharge, release, or threatened discharge or release into the environment of a hazardous substance, waste, oil, or petroleum product within the scope of any of the following:

- a. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9601 et seq.;
- b. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq.;
- c. California Hazardous Waste Control Act (California Health and Safety Code Sections §25100 et seq.);
- d. California Hazardous Substances Account Act (California Health and Safety Code Sections §25300 et seq.);
- e. Porter-Cologne Water Quality Control Act (California Water Code §13000 et seq.);
- f. Or similar federal or state environmental law

“Environmental Services” shall mean the performance of the activities necessary

to achieve Regulatory Closure and comply with Long-Term Obligations including but not limited to those required to comply with the RODs and associated Remedial Design reports and CERCLA, consistent with the NCP, (Navy Note: This definition should be identical to the definition of the same term in the ETCA) with respect to (i) Known Conditions and Unknown Conditions Discovered During the Course of Remediation even if the funds provided under this Agreement, and any insurance proceeds from the Environmental Insurance Policies, have been exhausted and even if the term of the Environmental Insurance Policies has expired; and (ii) Unknown Conditions Discovered Outside the Course of Remediation, but only to the extent such activities are funded by the Environmental Insurance Policies or to the extent such funding is unavailable as a result of the failure of SFRA or a named insured (other than the Navy) to comply with the requirements of the Environmental Insurance Policies.

The term "Environmental Services" does not include, except as specifically provided herein, the performance of any activities related to the following: Navy Retained Conditions; or Special Exclusions.

"Environmental Insurance Policies" shall mean the environmental insurance which Respondents shall procure in accordance with the ETCA

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"EPA Future Response Costs" shall mean all costs not inconsistent with the NCP, including, but not limited to, direct and indirect costs, that the EPA incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of establishing and maintaining the administrative record for this Order, or participating in community relations meetings, the costs-incurred pursuant to Section XII (Access and Institutional Controls), including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation costs for emergency response, or the costs incurred by EPA in enforcing the terms of the Order, including all costs incurred in connection with Dispute Resolution pursuant to Sections XXII and XXIII in the Order

"ETCA" shall mean the Early Transfer Cooperative Agreement entered into by the Navy and the San Francisco Redevelopment Authority, San Francisco, California for the Site, dated ____, and attached hereto as Exhibit ____.

"Existing Contamination" shall mean:

- 1) any hazardous substances, pollutants or contaminants present or existing on or under the Site as of the Effective Date;
- 2) any hazardous substances, pollutants or contaminants that migrated from the Site prior to the Effective Date; and

- 3) any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the Effective Date-

Existing Contamination includes, but is not limited to, Navy-Retained Conditions.

“FFA” shall mean the Hunter’s Point Naval Shipyard Federal Facilities Agreement, dated January 22, 1992, and any amendments thereto.

“Hunter’s Point Special Account” shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“Institutional Controls” shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

“Known Condition” shall mean one or more specified chemicals of concern in a specified medium (e.g., soil or groundwater) identified in the CERCLA RODs as requiring remedial action.

“Long Term Obligations” shall mean any long-term review, monitoring, reporting and institutional control (“IC”) and operation and maintenance requirements that are required to be performed subsequent to and as a condition of the issuance of a Certification of Completion of Remedial Action has been approved pursuant to this Order or a related Operations and Maintenance Agreement with DTSC including but not limited to requirements associated with or in furtherance of the CERCLA RODs, Remedial Design reports, and Operation and Maintenance reports reviewed and approved pursuant to the FFA, and including providing existing records and reports for the Navy's preparation of the CERCLA five year reviews for years 2013 and 2018 and SFRA preparation of the CERCLA five-year reviews thereafter. Long-Term Obligations do not include obligations attributable to NRCs or Special Exclusions.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Navy Retained Conditions shall mean Unexploded Ordnance (as defined in ETCA Section 223); Military Munitions (ETCA Section 224); chemical, radiological, or biological warfare agents; and Radiological Materials (ETCA Section 214). The term Navy Retained Conditions does not include Ineligible Work as defined in Section 218 of

the ETCA.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action(s) as required by EPA, in consultation with DTSC and RWQCB, pursuant to this Order or any O&M Agreement between DTSC and Respondents that supersedes the Order subsequent to and as a condition of the issuance of a Certification of Completion of Remedial Action.

"Operation and Maintenance Agreement" or "O&M Agreement" shall mean any Operations and Maintenance Agreement entered into by DTSC and the Respondents that supersedes the O&M provisions of this Order.

"Order" shall mean this Administrative Order on Consent, the SOW, all appendices attached hereto (listed in Section XXXVI) and all documents incorporated by reference into this document, including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Order upon approval by EPA. In the event of conflict between this Order and any appendix or other incorporated documents, this Order shall control.

"Paragraph" shall mean a portion of this Order identified by an Arabic numeral or an upper case letter.

"Parties" shall mean EPA, DTSC, RWQCB and Respondents.

"Pollution Conditions" shall have the meaning set forth in the Environmental Insurance Policies.

"RACR" shall mean a report prepared pursuant to the *DoD/EPA Joint Guidance, Remedial Streamlined Site Closeout and NPL Deletion Process for DoD Facilities* demonstrating that (1) the remedy at a ROD Implementation Area has been fully performed, including recordation of a modification to the LUC(s), if required by EPA; (2) initial implementation of any other institutional controls called for in the ROD, and (3) the Remedial Action Objectives have been attained.

"Radiological Materials" shall mean solid, liquid, or gaseous material derived from U.S. Government activities, that contains radionuclides regulated by the Atomic Energy Act of 1954, as amended, and those materials containing radionuclides defined as being derived from the Navy's work on the following: nuclear propulsion plants for ships and submarines; nuclear devices and nuclear components thereof, and; radiographic and instrument calibration sources and various instrumentation and radioluminescent products manufactured for military applications. The term "Radiological Materials" does not include products commonly used in non-military applications such as radioluminescent signs, and household smoke detector components that do not require special handling or special treatment as a result of the materials containing radionuclides other than being handled as household hazardous waste.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. ' ' 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

"Record of Decision(s)" or "ROD(s)" shall mean that certain CERCLA Amended Record of Decision for Parcel B dated January 14,2009 and that certain CERCLA Record

of Decision for Parcel G dated February 18, 2009 including all attachments thereto. The term "Record of Decision(s)" or "ROD(s)" shall not include any amendment, modification or supplement to the above-referenced Records of Decision except to the extent required as the result of any negligent act or omission of Respondents or their contractors

"Regulatory Enforcement Activities" means any regulatory enforcement costs that are not allowable costs under 10 U.S.C. 2701(d)(3), including activities associated with EPA, DTSC, RWQCB, or other independent State or Federal regulatory agency with jurisdiction over the ACES taking or preparing to take judicial enforcement actions against the SFRA, or its contractors or agents, for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety.

"Regulatory Oversight" includes all activities performed by EPA, DTSC, and RWQCB necessary to oversee the implementation of the AOC at the same level of service as would have been provided to the Navy, other than Regulatory Enforcement Activities.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Respondents to implement each of the RODs in accordance with the SOW and the Remedial Design and Remedial Action Work Plans and other plans approved by EPA, after consultation with DTSC and RWQCB.

"Remedial Action Objective" Shall mean the numeric or narrative clean-up standard specifically designated in a ROD as the "remedial action objective" for a particular remedy selected in the ROD.

"Remedial Action Work Plan" shall mean the document(s) developed pursuant to Paragraph 29 of this Order and approved or modified by EPA, after consultation with DTSC and RWQCB, and any amendments thereto.

"Remedial Designs" shall mean that certain Remedial Design for Parcel B dated ____ and that certain Remedial Design for Parcel G dated ____.

"Risk Management Plans" or "RMPs" shall mean that certain Pre-RACR Risk Management Plan dated ____, and that certain Post-RACR Risk Management Plan dated ____, and any subsequent amendments thereto.

"ROD Implementation Area" shall mean the portions of Parcels B and G identified in Exhibit ____, attached hereto, as that Exhibit may be amended from time to time with the approval of EPA, in consultation with DTSC and the RWQCB, which form the geographic units for which Respondents will seek certification of completion pursuant to Section XVII

"RWQCB" shall mean the Regional Water Quality Control Board, San Francisco Bay Region, and any successor agencies of the State.

"RWQCB Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the RWQCB incurs in reviewing or developing plans,

reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, or overseeing this Order including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of participating in community relations meetings, legal or enforcement costs, including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure costs to establish or implement institutional controls-including, but not limited to, the amount of just compensation, costs for emergency response, or the costs incurred by the RWQCB in enforcing the terms of the Order, including all costs incurred in connection with Dispute Resolution pursuant to Sections XXII and XXIII in the Order-

"Section" shall mean a portion of this Order identified by a Roman numeral.

"Site" shall mean that portion of the Hunter's Point Naval Shipyard Superfund Site which Respondents have agreed to remediate in accordance with this Order, encompassing approximately [REDACTED] acres, described in Appendix A and depicted generally on the map attached as Appendix B. The scope of the "Site" shall be the same as the "Area Covered by Environmental Services" as that term is defined in the ETCA

"Special Exclusions" means any of the following:

a. Activities and associated costs necessary to conduct any additional remedial action required by an Amendment to, or Explanation of Significance Difference (ESD) from, the Parcels B and G CERCLA RODs, except to the extent such activities and associated costs are funded by the Environmental Insurance Policies, or except to the extent attributable to any of the following:

1. The negligence of the SFRA or any party acting on its behalf, or any failure to perform Long-Term Obligations;
2. Requests by the SFRA or other party acting on behalf of the SFRA for modification of a remedial action selected in the Parcels B and G CERCLA RODs that is not required as a result of a Navy Remedy Failure, or from the discovery of a Navy Retained Condition or one of the other Special Exclusions identified in paragraphs b through e of this Section;

b. Activities and associated costs necessary to address any Environmental Condition migrating onto Parcel B from IR Site 25 in Parcel C or an Environmental Condition migrating onto Parcel G from Building 406 (also known as the IR Site 36 groundwater contamination/treatment area) in Parcel E.

c. Activities and associated costs, other than those required to implement the portions of the CERCLA RODs requiring the rebuilding of portions of the revetment wall on the Parcel B shoreline, necessary to address any Environmental Condition that has migrated onto Parcel F from Parcel B, except to the extent attributable to any negligence of the SFRA or any party acting on its behalf.

(Navy Note: The Navy proposes to use the term "Special Exclusions" in the FFA

rather than “Navy Obligations” and for the definitions to be identical in AOC, ETCA, and FFA.)

d. The performance of CERCLA five-year reviews for years 2013 and 2018 for remedies selected in the CERCLA RODs issued by the Navy.

e. Any activity and associated cost related to an Unknown Condition Discovered Outside the Course of Remediation that is not funded by the Environmental Insurance Policies, provided the unavailability of insurance funds is not the result of the failure of SFRA or a named insured (other than the Navy) to comply with the requirements of the Environmental Insurance Policies.

(Navy Note: the Navy has deleted this from the Navy’s draft ETCA and FFA Amendments.)

"State" shall mean the State of California.

“State Interest” shall mean the interest rate applied to outstanding payments for costs billed pursuant to California Health and Safety Code section 25360.1. The rate of interest is subject to change.

"Statement of Work" or "SOW" shall mean the statement of work required of each Respondent for implementation of one or more Remedial Design(s) and Remedial Action(s) the Site, as set forth in Appendix C to this Order and any modifications made in accordance with this Order. The Statement of Work shall identify, for each element of Work, which Respondent is responsible for performing that element.

"Supervising Contractor" shall mean the principal contractor retained by the Respondents to supervise and direct the implementation of the Work under this Order.

“Unknown Conditions Discovered During the Course of Remediation” shall mean Environmental Conditions that are discovered in the course of implementing the requirements of the CERCLA RODs in a portion of the Site that has not achieved Regulatory Closure, and are not Known Conditions, Special Exclusions, or Navy Retained Conditions. This term also includes environmental conditions discovered during cut and fill site preparation activities prior to installation of the initial remedial cover and includes “replacement” remedial cover and environmental conditions discovered by disturbing or altering a cover, cap or other component of an environmental remedy as defined in the definition of “Ineligible Work” in the ETCA.

“Unknown Conditions Discovered Outside the Course of Remediation” shall mean Environmental Conditions other than Known Conditions and Unknown Conditions Discovered During the Course of Remediation.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of

RCRA, 42 U.S.C. § 6903(27); (4) any "hazardous waste" under California Health and Safety Code section 25117, or "hazardous substance" under California Health and Safety Code section 25316; and (5) any "waste" under California Water Code section 13050.

"Work" shall mean all activities Respondents are required to perform under this Order, except those required by Section XXXV (Retention of Records). Work includes, but is not limited to, implementation and operation and maintenance of the remedies selected in the Amended Parcel B ROD and the Parcel G ROD and Environmental Services as defined in the ETCA and this Order.

V. FINDINGS OF FACT

14. Hazardous substances that have been released or that have the potential to be released within the Site include, but may not be limited to; metals, volatile organic compounds (VOC), semivolatile organic compounds (SVOC), pesticides, polychlorinated biphenyls (PCB), and radionuclides. Concentrations of a group of metals, especially arsenic and manganese, consistently exceeded remediation goals at locations across Parcels B and G. These ubiquitous metals are addressed by eliminating the exposure pathway with a cover. Groundwater contaminants which include VOCs, especially trichloroethene (TCE) and its degradation product vinyl chloride, pose a risk from exposure via vapor intrusion into buildings.

On January 22, 1992, the EPA, State of California Department of Health Services ("DHS") (now DTSC), and the Navy entered into a Federal Facilities Agreement requiring the Navy to identify, perform and complete all necessary response actions, including operation and maintenance at the former Hunter's Point Naval shipyard under CERCLA.

The Site contains 16 known Installation Restoration Program sites ("IRP sites"). The Navy has signed a Record of Decision and an Amended Record of Decision to select a remedy for the IRP sites.

The former Hunter's Point Naval Shipyard was selected in 1992 for Base Realignment and Closure and was officially closed in 1974.

The SFRA has requested an early transfer of the Site, which it has or will acquire, upon EPA's approval of and the State's concurrence on the Covenant Deferral Request. All of the response actions undertaken by Respondents shall be performed under this AOC, as determined by EPA, with DTSC and RWQCB concurrence, pursuant to CERCLA and the NCP.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

15. Based on the Findings of Fact set forth above, and the Administrative Record supporting this Order, EPA has determined that:

a. The former Hunter's Point Naval Shipyard is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and Waste Materials as defined in Section IV of this Order.

c. Respondents are each "persons" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The conditions described in Paragraph 14 above constitute an actual or threatened release of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), or a release of Waste Material, as defined in Section IV of this Order.

e. The response actions required by this Order are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VII. ADMINISTRATIVE ORDER

16. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Ordered and Agreed that Respondents shall comply with the provisions of this Order, including, but not limited to, all appendices to this Order and all documents incorporated by reference into this Order.

VIII. GENERAL PROVISIONS

17. Commitments by Respondents.

Respondents shall finance, through the funds provided by the Navy pursuant to the ETCA, any proceeds from the Environmental Insurance Policies, and Respondent SFRA's funds for Known Conditions and Unknown Conditions Discovered in the Course of Remediation to the extent not covered by ETCA funds and insurance proceeds, and shall perform the Work in accordance with this Order and any O&M Agreement entered into by DTSC and the Respondents that supersedes the O&M provisions of the Order, the SOW, the Records of Decision, and other decision documents applicable to the Site and associated with the Records of Decision, and all

work plans and other plans, standards, specifications, and schedules set forth herein or developed by Respondents and approved by EPA, in consultation with DTSC and RWQCB, pursuant to this Order and any subsequent O&M Agreement. Respondents shall also reimburse EPA, DTSC and RWQCB for their respective Future Response Costs as provided in this Order.

18. Compliance with Applicable Law.

All activities undertaken by the Respondents pursuant to this Order shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Respondents must also comply with all applicable or relevant and appropriate requirements of federal and state environmental laws as set forth in the ROD(s) and the SOW. The activities conducted pursuant to this Order, if approved by EPA, shall be considered to be consistent with the NCP.

19. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work) and where such remedial action is selected and carried out in compliance with Section 121 of CERCLA. Where any portion of the Work that is not on Site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain all such permits and approvals.

b. The Respondents may seek relief under the provisions of Section XXI (Force Majeure) of this Order for any delay in the performance of the Work resulting from a failure to obtain, or delay in obtaining, any permit required for the Work.

c. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

20. Conveyance of Site.

a. At least 30 days prior to the conveyance of a fee interest or leasehold interests in excess of 20 years to any portion of the Site. Respondents shall give written notice to EPA, DTSC, and RWQCB of the proposed conveyance, including the name and address of the grantee. Nothing in this Order shall be construed to require Respondents to secure the approval of EPA, DTSC, or RWQCB before transferring such interest

b. In the event of any such conveyance, Respondent's obligations under this Order shall be unaffected unless EPA, in consultation with DTSC and RWQCB, approves the transfer of the obligations of Respondents under this Order to a successor. EPA's decision under this Paragraph 20.b. is in its sole discretion and shall not be subject to dispute resolution or judicial review. EPA will consider the following criteria, among others, in approving or disapproving a proposed successor for the Work under this Order: (i) the technical qualifications of the successor, or its proposed consultant, to perform remaining Work obligations; (ii) financial ability to perform such obligations; (iii) the successor's legal status and legal authority to sign the Order; (iv) the proposed successor's willingness to sign the Order without modification; and (v) assurance that the proposed transfer of Work obligations will not hinder or delay completion of the Work. If EPA, in consultation with DTSC and RWQCB approve a successor for the Work under this Order, EPA, DTSC, and RWQCB may also provide covenants not to sue for the successor similar to those provided in Paragraphs 87 and 90 of this Order.

IX. PERFORMANCE OF THE WORK BY RESPONDENTS

21. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by the Respondents pursuant to Sections IX (Performance of the Work by Respondents), X (Remedy Review), XI (Quality Assurance, Sampling and Data Analysis), and XVIII (Emergency Response) of this Order shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA, after consultation with DTSC and RWQCB. Respondent ***CP/HPS Development Company has proposed to use MACTEC as its Supervising Contractor and provided EPA, DTSC and RWQCB with the information meeting the criteria described in subparagraph b. below, including its qualifications and Quality Management Plans.*** MACTEC is not disapproved. **NOTE: MACTEC to submit necessary information for review.**

b. If at any time in the future, Respondents propose to change its Supervising Contractor, Respondents shall notify EPA, DTSC, RWQCB, and the Navy in writing at least sixty (60) days in advance of such change, and must obtain an authorization to proceed from EPA, after consultation with DTSC and RWQCB, before the new Supervising Contractor performs, directs, or supervises any Work under this Order. Respondents must provide the name, title, and qualifications of any contractor proposed to be Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Respondents shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/241/B-01/002, March 2001) or equivalent documentation as determined by EPA.

EPA, after consultation with DTSC and RWQCB, will issue a notice of disapproval or an authorization to proceed.

c. If EPA disapproves a proposed Supervising Contractor, EPA will notify Respondents in writing. Respondents shall submit to EPA, DTSC and RWQCB a list of contractors, including the qualifications of each contractor that would be acceptable to them, within 30 days of receipt of EPA's disapproval of the contractor previously proposed. After consultation with DTSC and RWQCB, EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Respondents may select any contractor from that list that is not disapproved and shall notify EPA, DTSC and RWQCB of the name of the contractor selected within 21 days of EPA's authorization to proceed.

d. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Respondents from meeting one or more deadlines in a plan approved by the EPA pursuant to this Order, Respondents may seek relief under the provisions of Section XXI (Force Majeure).

22. Remedial Action. With respect to each remedial action, the following procedures and requirements shall apply:

a. Within [REDACTED] days of the Effective Date of this Order, Respondents shall submit to EPA, DTSC, RWQCB, and the Navy a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the relevant ROD and achievement of the Remedial Action Objectives, in accordance with the ROD, this Order, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA after consultation with DTSC and RWQCB. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Order. (Navy Note: The ETCA provides that the Navy shall also review the Remedial Action Work Plan for concurrence/nonconcurrence under the ETCA.) At the same time as the Remedial Action Work Plan is submitted, Respondents shall submit to EPA, DTSC and RWQCB a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements, including but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plan shall include the following which among other things shall provide for the complete initial installation of surface cover for all portions of the site for which RODs require a surface cover remedy no later than seven years after the Effective Date of this order: (1) schedule for completion of the Remedial Action; (2) schedule for developing and submitting other required Remedial Action plans; (3) methods for satisfying permitting requirements (4) methodology for implementation of the Operation and Maintenance Plan; (5) methodology for implementation of the Contingency Plan; (6) tentative formulation of the Remedial Action team; (7) construction quality control plan (by constructor); and (8)

procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include the methodology for implementation of the Construction Quality Assurance Plan and a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Respondents' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA and the Navy, after consultation with DTSC and RWQCB, Respondents shall implement the activities required under the Remedial Action Work Plan. The Respondents shall submit to EPA, DTSC and RWQCB all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIV (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Respondents shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

23. The Respondents shall continue to implement the Remedial Action and Operation and Maintenance until the Remedial Action Objectives are achieved and for so long thereafter as is otherwise required under this Order and any O&M Agreement entered into by DTSC and the Respondents that supersedes the O&M provisions of the Order and the ROD.

24. Respondents acknowledge and agree that nothing in this Order, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by EPA, DTSC or RWQCB that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Remedial Action Objectives.

25. Except as expressly provided in the SOW (NOTE to allow for revetment wall work) Respondents are not required to perform any Work under this Order on any property that is outside the boundaries of the Site or any Work associated with release of hazardous substances that have migrated onto, under or in the Site from a source outside the Site subsequent to the Effective Date of this AOC.

26. Waste Shipments.

a. For any Work performed under this Order, Respondents shall comply with all applicable State waste management laws.

b. For any Work performed under this Order, Respondents shall, prior to any shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA, DTSC and RWQCB Project Coordinators of such shipment of Waste Material. However, this notification requirement shall not apply to any off-site shipments to out-of-state waste management facilities when the total volume of all such shipments will not exceed 10 cubic yards.

c. The Respondents shall include in the written notification for out-of-state waste shipments the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

d. The identity of the receiving facility and state will be determined by the Respondents following the award of the contract for Removal Action or Remedial Action construction. The Respondents shall provide the information required by Paragraph 24.c. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

27. **Off-Site Waste Shipments.** Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-Site location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440. If the off-Site location is in California, Respondents shall obtain certification from the State that the proposed receiving facility is in substantial compliance with California laws. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provisions and regulations cited in the preceding sentences.

X. Remedy Review

28. Periodic Review.

For the duration of this Order, Respondents shall conduct any studies and investigations as requested by EPA, after consultation with DTSC and RWQCB, in order to permit EPA and/or the Navy to conduct reviews of whether any Remedial Action(s) is(are) protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

29. Selection of Further Response Actions.

If EPA and the Navy determine, at any time, after consultation with DTSC and RWQCB, that any Remedial Action at the Site is not protective of human health and the environment, EPA and the Navy may select further response actions for the Site in accordance with the requirements of the FFA and CERCLA and consistent with the NCP ("Further Response Actions").

a. **Opportunity to Comment.** For the duration of this Order, Respondents and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA and the Navy and to submit written comments for the record during the comment period.

b. Limitations on Respondents' Obligation to Perform Further Response Actions. *If EPA and the Navy select Further Response Actions for the Site, the Respondents shall have no obligation to undertake such Further Response Actions to the extent that such Actions are required as a result of Navy-Retained Conditions or Special Conditions to the extent such Actions are not part of the Environmental Services. Any requirement that Respondents undertake Further Response Actions shall be subject to Respondents' right to dispute resolution in accordance with Section XXIII. [NOTE: "Further Response Actions" would be a defined term in Section 13.]*

c. Submissions of Plans. If Respondents are required to perform further response actions pursuant to Paragraph 29.b., Respondents shall submit a plan for such work to EPA and the Navy for approval, in accordance with the procedures set forth in Section IX (Performance of the Work by Respondents) and shall implement the plan approved by EPA and the Navy, after consultation with DTSC and RWQCB, in accordance with the provisions of this Order.

XI. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

30. Respondents shall use quality assurance, quality control, and chain of custody procedures for all assessment, characterization, treatability, design, compliance and monitoring samples in accordance with "Uniform Federal Policy for Quality Assurance Project Plans (UFP-QAPP) (EPA/505/B-04-900A, March 2005), "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Respondents of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Order, Respondents shall submit to EPA for approval, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and relevant guidance. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Order. Respondents shall ensure that EPA, DTSC and RWQCB personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Order. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA, DTSC or RWQCB pursuant to the QAPP for quality assurance monitoring. Respondents shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Order perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988 (collectively, "CLP-approved methods"), and any amendments made thereto during the course of the implementation of this Order; however, upon approval by EPA, after consultation with DTSC and RWQCB, the

Respondents may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Respondents shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Order participate in an EPA or EPA-equivalent QA/QC program. Respondents shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and AEPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA after consultation with DTSC and RWQCB. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

31. Upon request, the Respondents shall allow split or duplicate samples to be taken by EPA, DTSC or RWQCB or their authorized representatives. Respondents shall notify EPA, DTSC and RWQCB not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA, after consultation with DTSC and RWQCB. In addition, EPA, DTSC and RWQCB shall have the right to take any additional samples that they deem necessary. Upon request, EPA shall allow the Respondents to take split or duplicate samples of any samples it takes as part of the EPA's oversight of the Respondents' implementation of the Work.

32. Respondents shall submit to EPA, DTSC and RWQCB two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Order unless EPA agrees otherwise, after consultation with DTSC and RWQCB.

33. Notwithstanding any provision of this Order, the United States and the State, including DTSC and RWQCB, hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

XII. ACCESS AND INSTITUTIONAL CONTROLS

34. As anticipated in the covenant deferral process, certain restrictions on land/soil and groundwater use are required to assure protection of human health and the environment at the time of transfer of the Site, prior to and during the implementation of response actions at the Site. Accordingly, the Navy, EPA, DTSC and RWQCB have prepared, in consultation with Respondents, land use covenants ("LUCs") consistent with the requirements of the RODs for Parcels B and G, and Respondents have prepared, and EPA, the Navy, DTSC and RWQB have approved the Risk Management Plans.

a. Respondents shall comply with the use restrictions set forth in the LUCs except to the extent Respondents obtain the approval of Navy, DTSC, EPA and RWQCB to allow an otherwise restricted use or activity pursuant to the approval procedures set forth in the LUCs or Risk Management Plans, respectively.

b. Respondents shall refrain from using the Site in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of remedial measures and response actions to be performed pursuant to this Order and/or in accordance with the RODs.

35. Respondents shall provide the United States, including EPA and the Navy, and DTSC and RWQCB, and their representatives and contractors, with access at all reasonable times to the Site, for the purpose of conducting any activity related to this Order including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to EPA, DTSC and RWQCB;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for planning or implementing response actions or additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (7) Implementing any response actions or the Work in the event of Default by Respondents;
- (8) Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Respondents or its agents, consistent with Section XXXIII (Access to Information);
- (9) Assessing Respondents' compliance with this Order; and
- (10) Determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted by, or pursuant to this Order.

36. If EPA determines, after consultation with DTSC and RWQCB, that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement any remedies selected in the RODs, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Respondents shall cooperate with EPA's efforts to secure such governmental controls.

37. Notwithstanding any provision of this Order, the United States and the State, including DTSC and RWQCB, retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement

authorities related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

XIII. REPORTING REQUIREMENTS

38. In addition to any other requirement of this Order, Respondents shall submit an electronic copy of monthly progress reports to EPA, DTSC and RWQCB that: (a) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Respondents or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Order completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Respondents has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Respondents shall submit these progress reports to EPA, DTSC and RWQCB by the tenth day of every month following the Effective Date of this Order until EPA notifies the Respondents pursuant to Section XVII (Certification of Completion). If requested by EPA, DTSC or RWQCB, Respondents shall also provide briefings for EPA, DTSC and RWQCB to discuss the progress of the Work.

39. The Respondents shall notify EPA, DTSC and RWQCB of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

40. Upon the occurrence of any event during performance of the Work that is required to be reported pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), the Respondent owning the property where the event occurred shall within 24 hours of the onset of such event orally notify the EPA, DTSC and RWQCB Project Coordinators or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 9, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

41. Within 20 days of the onset of such an event, the Respondent owning the property where the event occurred shall furnish to EPA, DTSC and RWQCB a written

report, signed by that Respondent's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, that Respondent shall submit a report setting forth all actions taken in response thereto.

42. Respondents shall notify EPA, DTSC and RWQCB within thirty (30) calendar days of discovering, or receiving actual notice of, any Environmental Condition at, or affecting the Site, other than an event or condition covered by the requirements of Paragraph 56 (Emergency Response), which Respondents assert is not within the definition of Environmental Services. This notice shall be provided at the same time notice is given to the Navy pursuant to Section 301 of the ETCA. The Notice shall include the explanation/basis for Respondent's assertion and if the Navy does not agree that it is responsible for the condition within 30 days of the Notice, EPA, DTSC and RWQCB, shall meet with Respondents and the Navy and confer in an attempt to reach a mutually agreeable solution to address the circumstances, including, if appropriate agreeing to the scope of, and allocation of costs for, any further investigation that may be necessary to ascertain whether the discovery is within the scope of Environmental Services. If a mutually agreeable solution to address the Environmental Condition is not reached within 90 days of the Notice, EPA, in consultation with DTSC and RWQCB, shall direct Respondents to conduct the work unless EPA determines that the work is a Navy Retained Condition. Respondents reserve the right to initiate the dispute resolution process as provided in Section 72 of this Order.

((Reserved "Placeholder": The Navy has proposed to delete the phrase regarding Navy dispute resolution rights at the end of this paragraph because the Navy is currently engaged in internal deliberations regarding potential dispute resolution language to include here and in the FFA. The Navy will provide alternative proposed language in a future draft. Furthermore, to the extent this approach could be interpreted to subject the Navy to EPA's administrative order authority, it may be necessary to obtain concurrence from DoJ's environmental defense lawyers as we understand that they have a concurrence role over EPA administrative orders issued to the Navy.)))

43. Each Respondent shall submit a hard copy and an electronic copy of all plans, reports, and data required by the SOW, each Remedial Design Work Plan, each Remedial Action Work Plan, or any other document which that respondent is required to submit under the Scope of Work to EPA in accordance with the schedules set forth in such plans and to the Navy in a manner that is consistent with this Order, any O&M Agreement entered into by DTSC and the Respondents in the future that supersedes the

O&M provisions of this Order, and the Navy review, comment, and concurrence requirements of the ETCA and its attached Technical Specification and Requirements Statement (“TSRS”). The submitting Respondent shall simultaneously submit copies of all such plans, reports and data the Respondent is required to submit under the Scope of Work to DTSC, RWQCB, and the Navy. Upon request by EPA, DTSC, RWQCB, or the Navy, the submitting Respondents shall submit in electronic form all portions of any report or other deliverable Respondents are required to submit pursuant to the provisions of this Order. All reports and other documents submitted by Respondents to EPA, DTSC, RWQCB, and the Navy (other than the monthly progress reports referred to above) which purport to document Respondents' compliance with the terms of this Order shall be signed by an authorized representative of the Respondents.

XIV. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

44. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Order, EPA, after consultation with DTSC, RWQCB, and the Navy shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the submitting Respondent modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing the submitting Respondent at least one notice of deficiency and an opportunity to cure within thirty (30) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

45. In the event of approval, approval upon specified conditions, or modification by EPA, pursuant to Paragraph 47, the submitting Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to Respondents' right to invoke the Dispute Resolution procedures set forth in Section XXIII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 46(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXIV (Stipulated Penalties).

46. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 44, the submitting Respondent shall, within thirty (30) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXIV, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 54.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 44, the submitting Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties under Section XXIV (Stipulated Penalties).

47. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, after consultation with DTSC, RWQCB, and the Navy, EPA may again require the submitting Respondent to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. The submitting Respondent shall implement any such plan, report, or item as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XXIII (Dispute Resolution).

48. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, the submitting Respondent shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the submitting Respondent invokes the dispute resolution procedures set forth in Section XXIII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XXIII (Dispute Resolution) and Section XXIV (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXIV.

49. All plans, reports, and other items required to be submitted to EPA, DTSC and RWQCB under this Order shall, upon approval or modification by EPA, be enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Order, the approved or modified portion shall be enforceable under this Order.

XV. PROJECT COORDINATORS

50. Within 20 days of the Effective Date of this Order, each Respondent, DTSC, RWQCB, the Navy, and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Respondents' Project Coordinators shall be subject to disapproval by EPA, in consultation with DTSC, RWQCB, and the Navy, and shall have the technical expertise sufficient to adequately oversee all aspects of the Work.

The Respondents' Project Coordinators shall not be attorneys for the Respondents in this matter. They may assign other representatives, including other contractors, to serve as a representative for oversight of performance of daily operations during remedial activities.

51. EPA, DTSC, RWQCB, and the Navy may designate other representatives, including, but not limited to EPA, DTSC RWQCB, and Navy employees, and federal and state contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Order. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Order and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material. EPA's Project Coordinator, DTSC's Project Coordinator, RWQCB's Project Coordinator, the Navy's BRAC Environmental Coordinator or functional equivalent, and the Respondents' Project Coordinators will meet on a monthly basis or on such other schedule as they shall approve.

XVI. Assurance of Ability to Complete Work

52. EPA, DTSC and RWQCB hereby acknowledge that the funds provided by the Navy pursuant to the ETCA, the Environmental Insurance Policies procured pursuant to the ETCA, and Respondent SFRA's commitment to the Navy to guarantee performance of Environmental Services for Known Conditions and Unknown Conditions Discovered in the Course of Remediation even if funds provided under the ETCA and insurance proceeds have been exhausted and the terms of insurance policies have expired provide sufficient Financial Assurance of the Respondents' ability to complete the Work.

XVII. Certification of Completion

53. Certification of Completion of the Remedial Action. With respect to each ROD Implementation Area, the following procedures and requirements shall apply:

a. Within 90 days after Respondents conclude that the Remedial Action for a ROD Implementation Area and any additional response action required to address Unknown Condition Discovered in the Course of Remediation prior to issuance of a Certification of Completion ("additional response action") has been either: (1) fully performed, including recordation of a modification to the LUC(s), if required by EPA, and initial implementation of any other institutional controls called for in the ROD or decision document for any additional response action, and the Remedial Action Objectives for the Remedial Action and response action objectives for any additional response action have been attained, or (2), for remedies involving long-term

operation of a groundwater or soil vapor remediation system, the system is constructed, in place, and is operating properly and successfully but the Remedial Action Objectives or additional response action objectives have not been attained, Respondents shall schedule and conduct a pre-certification inspection to be attended by Respondents, EPA, DTSC, RWQCB and the Supervising Contractor(s). If, after the pre-certification inspection, Respondents still believe that the Remedial Action and any additional response action have been fully performed and the Remedial Action Objectives and additional response action objectives for such additional response action have been attained or for remedies involving long-term operation of a groundwater or soil vapor remediation system, the system is constructed, in place and is operating properly and successfully but the Remedial Action Objectives have not been attained,, Respondents shall, as applicable, submit to EPA for approval a RACR requesting Certification of Completion of Remedial Action, with a copy to the DTSC and RWQCB, pursuant to Section XIV (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a professional engineer registered in the State and Respondents' Project Coordinator shall state that the Remedial Action and any additional response action required for the ROD Implementation Area have been completed in full satisfaction of the requirements of this Order. The RACR shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible official of Respondents or the Respondents' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

b. If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after consultation with DTSC and RWQCB, determines that the Remedial Action and any additional response action required for the ROD Implementation Area or any portion thereof has not been completed in accordance with this Order or that the Remedial Action Objectives and additional response action objectives for any additional response action have not been achieved, EPA will notify Respondents in writing of the activities that must be undertaken by Respondents pursuant to this Order to fulfill the requirements for obtaining a Certification of Completion of Remedial Action; provided however, that EPA may only require Respondents to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the remedy selected in the ROD and decision document for any additional response action. EPA will set forth in the notice a schedule for performance of such activities consistent with the Order and the SOW or require the Respondents to submit a schedule to EPA, DTSC and RWQCB for approval pursuant to Section XIV (EPA Approval of Plans and Other Submissions). Respondents shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to Respondents' right to invoke the dispute resolution procedures set forth in Section XXIII (Dispute Resolution).

c. If EPA concludes, based on the initial or any subsequent RACR requesting Certification of Completion of Remedial Action and after consultation with

DTSC and RWQCB, that the Remedial Action and any additional response action required have been performed in accordance with this Order and that the Remedial Action Objectives and additional response action objectives for any additional response action have been achieved, EPA will so certify in writing to Respondents. This certification shall constitute, as applicable, a Certification of Completion of Remedial Action or Certification of Completion of a ROD Implementation Area for purposes of this Order. Receipt of a Certification under this Paragraph 53 of Completion of the Remedial Action shall not affect Respondent's obligations under this Order to perform required actions other than those necessary to obtain the Certification.

d. After EPA has issued a Certification of Completion of Remedial Action for each ROD Implementation Area within the Site, EPA shall certify in writing to Respondents that the Remedial Action and any additional response action required for the entire Site have been performed in accordance with this Order and that the Remedial Action Objectives and additional response action objectives for any additional response action have been achieved for the entire Site. This certification shall constitute a Certification of Completion of Remedial Action for the Site.

54. NPL Deletion.

After EPA has issued a Certification of Completion of Remedial Action for all of ROD Implementation Areas comprising Parcel G and/or for all of the ROD Implementation Areas comprising the portion of Parcel B within the Site; EPA will consider a request to initiate the regulatory proceedings necessary to effectuate a Partial Deletion from the National Priorities List of Parcel G and/or the portion of Parcel B within the Site from the Hunters Point Naval Shipyard Superfund Site.

(Navy Note: It is the Navy's understanding that this paragraph will be deleted.)

XVIII. EMERGENCY RESPONSE

56. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of hazardous substances at the Site that constitutes an emergency situation, or may present an immediate threat to public health or welfare or the environment, the Respondent that owns the property where the release has been caused or threatened shall, subject to Paragraph 57, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify EPA's, DTSC's, RWQCB's, and the Navy's Project Coordinators. If EPA's Project Coordinator is unavailable, EPA's Alternate Project Coordinator must be notified. If neither of these EPA persons is available, that Respondent shall notify the EPA Emergency Response Unit, Region 9. That Respondent shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Contingency Plans, and any other

applicable plans or documents developed pursuant to the SOW. In the event that the Respondents fail to take appropriate response action as required by this Section and EPA takes such action instead, Respondents shall reimburse EPA for all costs of the response action not inconsistent with the NCP, pursuant to Section XIX (Payments for Response Costs).

57. Nothing in the preceding Paragraph or in this Order shall be deemed to limit any authority of the United States or the State, including DTSC and RWQCB, to a) take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of hazardous substances on, at, or from the Site, or b) direct or order such action, or seek an order from a Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XIX. PAYMENTS FOR EPA FUTURE RESPONSE COSTS

58. The amounts to be paid by Respondents pursuant to Paragraph 59 shall be deposited in the HPNS Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

59. Payments for EPA Future Response Costs.

a. Respondents shall pay to EPA all EPA Future Response Costs not inconsistent with the National Contingency Plan. The Respondents may only use ETCA funds to pay for EPA "Regulatory Oversight" costs as provided in the ETCA and may not use ETCA funds to reimburse EPA for any other EPA Future Response Costs. Except as provided in Paragraph 59.c below, EPA will send Respondents, on a periodic basis, a bill requiring payment that includes a standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondents shall make all payments within 30 days of Respondents' receipt of each bill requiring payment, except as otherwise provided in Paragraph 60. Respondents shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, and EPA Site/Spill ID Number #XXXXXX Respondents shall send the check(s) to:

U.S. Environmental Protection Agency
Attn: Region 9 Receivables
P.O. Box 371099M
Pittsburgh, PA 15251

b. At the time of payment under Paragraph 60.a or 59.c, Respondents shall send notice that payment has been made to EPA and to the

Regional Financial Management Officer, in accordance with Section XXXV (Notices and Submissions).

c. Within 30 days of the Effective Date, Respondents shall pay to EPA \$ [to be determined] in prepayment of anticipated EPA Future Response Costs. The total amount paid shall be deposited by EPA in the HPNS Special Account, within the EPA Hazardous Substance Superfund. These funds shall be retained and used by EPA to conduct or finance future response actions. Respondents shall make the payment required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund, " referencing the name and address of the party making the payment, and EPA Site/Spill ID Number #XXXX Respondents shall send the check(s) to:

U.S. Environmental Protection Agency
Attn: Region 9 Receivables
P.O. Box 371099M
Pittsburgh, PA 15251

In the event that the payments required by this subparagraph are not made within 60 days of the Effective Date, Respondents shall pay Interest on the unpaid balance. The Interest on EPA Future Response Costs shall begin to accrue on the thirtieth day following the Effective Date. The Interest shall accrue through the date of the Respondents' payment.

d. After EPA issues its written Certification of Completion of Work and EPA has performed a final accounting of EPA Future Response Costs, EPA shall offset the final bill for EPA Future Response Costs by any unused amount paid by the Respondents pursuant to Paragraph 59.a or Paragraph 59.c. Any amount in excess of amounts due to EPA shall be returned to Respondents.

60. Respondents may contest payment of any EPA Future Response Costs under Paragraph 59 if Respondents determines that EPA has made an accounting error or if Respondents alleges that a cost item that is included represents costs that are inconsistent with the NCP or if the cost is outside the definition of EPA Future Response Costs. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to EPA pursuant to Section XXXV (Notices and Submissions). Any such objection shall specifically identify the contested EPA Future Response Costs and the basis for objection. In the event of an objection, the Respondents shall within the 30-day period pay all uncontested EPA Future Response Costs to EPA in the manner described in Paragraph 59. Simultaneously, the Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State and remit to that escrow account funds equivalent to the amount of the contested EPA Future Response Costs. The Respondents shall send to EPA, as provided in Section XXXV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested EPA Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with

establishment of the escrow account, the Respondents shall initiate the Dispute Resolution procedures in Section XXIII (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, the Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 59. If Respondents prevail concerning any aspect of the contested costs, the Respondents shall pay that portion of the costs (plus associated accrued interest) for which Respondents did not prevail to the United States in the manner described in Paragraph 59; Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Respondents' obligation to reimburse EPA for its EPA Future Response Costs.

61. In the event that the payments required by Paragraph 59.a. are not made within 30 days of the Respondents' receipt of the bill, Respondents shall pay Interest on the unpaid balance. The Interest on EPA Future Response Costs shall begin to accrue on the date of the bill.

62. Payment of DTSC Future Response Costs.

a. As of the Effective Date of this Order, Respondents shall pay all of DTSC's Future Response Costs related to the Work performed under this Order. The Respondents may only use ETCA funds to pay for DTSC "Regulatory Oversight" costs as provided in the ETCA and may not use ETCA funds to reimburse DTSC for any other DTSC Future Response Costs. DTSC will bill Respondents quarterly for its response costs. Respondents shall pay DTSC within sixty (60) days of date of invoice. Any billing not paid within sixty (60) days is subject to State Interest calculated from the date of the invoice pursuant to California Health and Safety Code section 25360.1. All payments made by Respondents pursuant to this Order shall be by cashier's or certified check made payable to "DTSC," and shall bear on the face the project code of the Site (Site ____) and the Docket number of this Order. Payments shall be sent to:

Department of Toxic Substances Control
Accounting/Cashier
1001 I Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of all payment checks shall also be sent to the person designated by DTSC to receive submittals under this Order.

b. If Respondents disputes a DTSC billing, or any part thereof, Respondents shall notify DTSC's assigned project manager and attempt to informally resolve the dispute with DTSC's project manager and branch chief. If Respondents desires to formally request dispute resolution with regard to the billing, Respondents shall file a request for dispute resolution in writing within 45 days of the date of the billing in dispute. The written request shall describe all issues in dispute and shall set forth the reasons for the dispute, both factual and legal. If the dispute pertains only to a portion of the costs included in the invoice, Respondents shall pay all costs which are undisputed in accordance with Subparagraph 62.a. The filing of a notice of dispute pursuant to this

Paragraph shall not stay the accrual of DTSC interest on any unpaid costs pending resolution of the dispute. The written request shall be sent to:

Special Assistant for Cost Recovery and Reimbursement Policy
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

A copy of the written request for dispute resolution shall also be sent to the person designated by DTSC to receive submittals under this Order. A decision on the billing dispute will be rendered by the Special Assistant for Cost Recovery and Reimbursement Policy or other DTSC designee.

63. Payment of RWQCB Future Response Costs

a. As of the Effective Date of this Order, the Respondents are liable for all of the RWQCB's costs related to the Work performed under this Order in responding to the hazardous materials at the Site. Cost recovery may be pursued by the RWQCB under CERCLA, California Health and Safety Code Sections 25187.2 and 25360, California Water Code Sections 13304 and 13365, or any other applicable state or federal statute or common law. The RWQCB will bill the Respondents quarterly for oversight activities performed by the RWQCB hereunder. The Respondents may only use ETCA funds to pay for RWQCB "Regulatory Oversight" costs as provided in the ETCA and may not use ETCA funds to reimburse EPA for any other RWQCB Future Response Costs. The Respondents shall pay the RWQCB within sixty (60) days of receipt of the RWQCB's billing. Any billing not paid within sixty (60) days is subject to State Interest calculated from the date of the billing pursuant to California Health and Safety Code section 25360.1. All payments made by the Respondents pursuant to this Order shall be by cashier's check or certified check made payable to the RWQCB and shall bear on the face the project code of the Site. Payments to the RWQCB shall be sent to:

State Water Resources Control Board
SLIC Program
P.O. Box 944212
Sacramento, CA 94244-2120

A photocopy of all payment checks shall also be sent to the person designated by the RWQCB to receive submittals under this Order.

b. If Respondents disputes a RWQCB billing, or any part thereof, Respondents shall notify the RWQCB's assigned project manager and attempt to informally resolve the dispute with the RWQCB's project manager and immediate supervisor. If Respondents desires to formally request dispute resolution with regard to the billing, Respondents shall file a request for dispute resolution in writing within 45 days of the date of the billing in dispute. The written request shall describe all issues in dispute and shall set forth the reasons for the dispute, both factual and legal. If the dispute pertains only to a portion of the costs included in the invoice, Respondents shall

pay all costs which are undisputed in accordance with Subparagraph 63.a. The filing of a notice of dispute pursuant to this Paragraph shall not stay the accrual of RWQCB interest on any unpaid costs pending resolution of the dispute. The written request shall be sent to:

RWQCB Address/POC

A copy of the written request for dispute resolution shall also be sent to the person designated by the RWQCB to receive submittals under this Order. A decision on the billing dispute will be rendered by Mr. Landau, or his designee.

XX. INDEMNIFICATION AND INSURANCE

64. Respondents' Indemnification of the United States and State.

a. The United States does not assume any liability by entering into this agreement. Respondents shall indemnify, save and hold harmless the United States and the State and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order. Further, the Respondents agree to pay the United States and the State all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Order. Neither the Respondents nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give Respondents notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 64.a. and shall consult with Respondents prior to settling such claim.

c. Nothing in this Paragraph 64 or Paragraph 65 shall be construed to waive or in any way limit any rights Respondents may have against the United States as a result of acts or omissions for which the United States Navy is responsible, including but not limited to rights under CERCLA or Section 330 of the FY 1992 National Defense Authorization Act, as amended or under the Conveyance Agreement for Hunters Point Shipyard between the United States Navy and SFRA on _____, or under any deed to be executed by the Navy for any portion of the Site. Nothing in this paragraph shall be construed or interpreted in a manner inconsistent with the indemnifications,

waivers, and releases of liability in Section 711 of the ETCA. (Navy Note: We will need to coordinate this paragraph with our Navy headquarter's legal counsel).

65. Respondents waive all claims against the United States and the State, including DTSC and RWQCB, for damages or reimbursement or for set-off of any payments made or to be made to the United States or DTSC and RWQCB arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States and the State, including DTSC and RWQCB, with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays, provided, however, that nothing herein shall limit Respondents' right to claim that any delays caused by the United States and/or State, including the DTSC and RWQCB, constitute a force majeure event under this Agreement.

66. No later than 15 days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary of EPA's last Certification of Completion of the Remedial Action applicable to the Site pursuant to Section XVII (Certification of Completion), comprehensive general liability insurance with limits of five (5) million dollars, combined single limit, and automobile liability insurance with limits of one (1) million dollars, combined single limit, naming the United States, DTSC, and RWQCB as additional insureds. In addition, for the duration of this Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Order. Prior to commencement of the Work under this Order, Respondents shall provide to EPA, DTSC and RWQCB certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Respondents demonstrates by evidence satisfactory to EPA, DTSC and RWQCB that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondents need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XXI. FORCE MAJEURE

67. "Force Majeure " for purposes of this Order, is defined as any event arising from causes beyond the control of the Respondents, of any entity controlled by Respondents, or of Respondents' contractors, that delays or prevents the performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Without limitation, a court-ordered injunction or stop work order related to any Work

required by this Order is considered to be a Force Majeure event. In addition, Respondents' inability to perform Work required under this Order due to the Navy's failure or delay in addressing a Navy Retained Condition, or any breach of the ETCA by the Navy, shall be considered a Force Majeure event. The requirement that the Respondents exercise best efforts to fulfill the obligation includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include a failure to attain the Remedial Action Objectives or financial inability to complete the Work, except to the extent that a failure by the Navy to fund all or a portion of the ETCA delays or prevents performance of obligations under this Order that are funded by the ETCA. Except as otherwise provided in this Paragraph 67, "Force Majeure" shall not, except as set forth above, include any delays caused by any disputes between the Navy and/or Respondents or any successors in title to the Site. Any delays caused by disagreements between or among EPA, DTSC and/or RWQCB and/or the Navy, or any other regulatory agency with jurisdiction over any matter herein, shall be considered out of Respondents' control, shall be considered a Force Majeure event, and Respondents shall have no obligation under this Order to mitigate the effects of such Force Majeure event.

68. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a Force Majeure event, the Respondents shall notify orally EPA's Project Coordinator, DTSC's Project Coordinator RWQCB's Project Coordinator, and the Navy's Project Coordinator, or, in his or her absence, their Alternate Project Coordinators or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 9, within 48 hours of when Respondents first knew that the event might cause a delay. Within 14 days thereafter, Respondents shall provide in writing to EPA, DTSC, RWQCB, and the Navy an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Respondents' rationale for attributing such delay to a Force Majeure event if Respondents intend to assert such a claim; and a statement as to whether, in the opinion of the Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Respondents shall include with any notice all available documentation supporting Respondents' claim that the delay was attributable to a Force Majeure event. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known.

69. If EPA, after consultation with DTSC, RWQCB, and the Navy, agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for

performance of the obligations under this Order that are affected by the Force Majeure event will be extended by EPA, after consultation with DTSC, RWQCB, and the Navy, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after consultation with DTSC, RWQCB, and the Navy, does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify the Respondents in writing of its decision. If EPA, after consultation with DTSC, RWQCB, and the Navy, agrees that the delay is attributable to a Force Majeure event, EPA will notify the Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

70. If the Respondents elect to invoke the dispute resolution procedures set forth in Section XXIII (Dispute Resolution), Respondents shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs 67 and 68, above. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Order identified to EPA.

XXII. EPA, DTSC AND RWQCB DISPUTE PROCESS

71. If disagreements or disputes arise during the consultation process between EPA, DTSC and RWQCB under this Order, EPA, DTSC and RWQCB agree to use the process outlined in this Paragraph to resolve such disputes. EPA, DTSC and RWQCB shall, whenever possible, make decisions by consensus at the Project Coordinator level. In the event a consensus decision cannot be reached by the EPA, DTSC and RWQCB Project Coordinators concerning the approval of a document or deliverable required by this Order, a meeting or telephone conference shall be scheduled and held within five (5) days of DTSC and/or RWQCB raising the dispute among EPA, DTSC and RWQCB Project Coordinators and their immediate supervisors to reach a consensus decision. If consensus cannot be reached by the immediate supervisors, the dispute shall be immediately elevated to the EPA Region 9 Assistant Director of the Federal Facility and Site Cleanup Branch, the DTSC Supervising Hazardous Substances Engineer II, xxxxx Office, Brownfields and Environmental Restoration Program, and the RWQCB Section Chief, Site Cleanup Section, who shall meet or confer by telephone within ten (10) days of the meeting or telephone conference discussed above in an attempt to resolve the dispute through consensus. If no consensus can be reached, the dispute shall be immediately elevated to the EPA Region 9 Director of the Superfund Division, the DTSC Deputy Director for Site Mitigation and Brownfields Reuse, and the RWQCB Executive Officer, who shall meet or confer by telephone within ten (10) days of the meeting or telephone conference discussed in the previous sentence in an attempt to resolve the

dispute through consensus. If no consensus can be reached, the decision applicable to Respondents shall be the final decision made by the EPA Region 9 Director of the Superfund Division. By agreeing to this decision making process, DTSC and RWQCB do not waive any right or claim each agency may have for relief, and reserve any authority they may have under federal or state law to require Waste Material cleanups compliant with such law.

XXIII. DISPUTE RESOLUTION

72. The dispute resolution procedures of this Section shall be utilized to resolve disputes between Respondents and EPA arising under or with respect to this Order prior to the exercise of any other rights or remedies Respondents may have under applicable law to object to or challenge a decision of any other Party to this order.

((Reserved “Placeholder”: The Navy has proposed to delete the above language regarding Navy dispute resolution rights at the end of this paragraph because the Navy is currently engaged in internal deliberations regarding potential dispute resolution language to include here and in the FFA. The Navy will provide alternative proposed language in a future draft. Furthermore, to the extent this approach could be interpreted to subject the Navy to EPA’s administrative order authority, it may be necessary to obtain concurrence from DoJ’s environmental defense lawyers as we understand that they have a concurrence role over EPA administrative orders issued to the Navy.))

However, the procedures set forth in this Section shall not apply to actions by EPA to enforce obligations of the Respondents that have not been disputed in accordance with this Section.

73. Any dispute which arises under or with respect to an EPA decision under this Order shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when Respondents sends the other Parties a written Notice of Dispute.

74. **Statements of Position.** In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA, except on disputes regarding DTSC or RWQCB Future Response Costs reimbursement, shall be final unless within 14 days after the conclusion of the informal negotiation period, Respondents invoke the formal dispute resolution procedures of this Section by serving on EPA or Respondents as appropriate, with copies concurrently provided to DTSC, RWQCB, and Navy, a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and all supporting documentation replied upon.

75. Within 21 days after receipt of the Statement of Position, EPA will serve on all other parties and the Navy its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. Within 7 working days after receipt of EPA's Statement of Position, Respondents and/or the Navy may submit a Reply. DTSC and RWQCB may also file a Statement of Position for EPA's consideration on the disputed matter no later than 7 days from receipt of EPA's Statement of Position.

76. Following receipt of all statements to be submitted pursuant to Paragraphs 74 and 75, the Director of the Superfund Division, EPA Region 9 will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be final. The invocation of formal dispute resolution procedures under this section shall not restrict Respondents rights and remedies available under applicable law.

77. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Respondents under this Order, not directly in dispute, unless EPA, after consultation with DTSC and RWQCB, agrees otherwise. . In the event that the Respondents do not prevail on the disputed issue, stipulated penalties may be assessed and shall be paid as provided in Section XXIV (Stipulated Penalties). If respondents prevail on the dispute issue, the stipulated penalties shall be discharged.

XXIV. STIPULATED PENALTIES

78. A Respondent shall be liable for stipulated penalties in the amounts set forth in Subparagraphs 78.a. and b. to EPA, DTSC, and RWQCB, with 50% of such penalties to be paid to EPA and 50% to DTSC and RWQCB, for failure to comply with the requirements of this Order specified below, unless excused under Section XXI (Force Majeure). Payment of stipulated penalties to DTSC and RWQCB shall be split evenly, unless otherwise directed in the demand letter set forth in Paragraph 81. "Compliance" by a Respondent shall include completion of the activities required to be completed by that Respondent under this Order or any work plan or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, the SOW, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order. Except with respect to an emergency or other situation described in Section 56 above, a Respondent shall not be liable for the stipulated penalties set forth in this Section as a result of the failure of the other Respondent to comply with the Order.

a. Stipulated Penalty Amounts – Work, including Payment of Future Response Costs.

The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph (i):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 30th day

\$2,500	30th through 45th day
\$15,000	45th day and beyond

i. Compliance Milestones. The following shall constitute general categories of “compliance milestones” subject to stipulated penalties under Paragraph 78.a. Specific documents/actions within Paragraph 78.a.i.(1) – (7) shall be subject to the stipulated penalties set forth above to the extent such documents have been designated “critical path” documents by Respondents in each Monthly Progress Report and subject to approval by EPA.

- 1) Remedial Action Workplan
- 2) Operations and Maintenance Plan
- 3) Remedial Action Completion Report
- 4) Work Status Report
- 5) Late Payment of EPA, DTSC, or RWQCB Future Response Costs
- 6) Failure to comply with any use restrictions selected in the RODs
- 7) Failure to provide access pursuant to Paragraph 35

b. Stipulated Penalty Amounts - Reports.

The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports, including the Annual GW monitoring Report, the Annual O & M Compliance Monitoring Report and Incident Reports, or other written documents not within the scope of Subparagraph 78.a.i. above, and any other violation of this Order:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 30th day
\$1,500	30th through 45th day
\$10,000	45th day and beyond

79. All penalties shall begin to accrue on the day performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XIV (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency except as set forth in Paragraph 48; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 9, under Paragraph 76 of Section XXIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Respondents' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute.— Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

80. All penalties accruing under this Section shall be due and payable within 30 days of the Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invokes the Dispute Resolution procedures under Section XXIII (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Attn: Region 9 Receivables, P.O. Box 37109M, Pittsburgh PA 15262-0001, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #0941. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA, DTSC, and RWQCB as provided in Section XXXV (Notices and Submissions).

81. All payments to DTSC and RWQCB under this Section shall be due and payable within 30 days of the Respondents' receipt from DTSC and the RWQCB of a demand for payment of the penalties, unless Respondents invokes the Dispute Resolution procedures under Section XXIII (Dispute Resolution). All payments to DTSC under this section shall be paid by cashier's or certified check made payable to "DTSC," and shall bear on the face the Docket number of this Order. Payments shall be sent to:

Department of Toxic Substances Control
Accounting/Cashier
1001 I Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

All payments to RWQCB under this section shall be paid by certified or cashier's check(s) made payable to the State Water Resources Control Board Cleanup and Abatement Account and shall bear on the face the Docket number of this Order. Payment *shall be sent to California Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive, #200, Rancho Cordova, CA 95670. [Note: Correct region?]*

82. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the Work required under this Order.

83. Penalties shall continue to accrue as provided in Paragraph 89 during any dispute resolution period. Any such penalties need not be paid until the following: If the dispute is resolved by agreement, or by a decision of EPA, accrued penalties determined to be owing shall be paid to EPA within 30 days of the agreement or the receipt of EPA's decision or order. If Respondents prevail on the disputed issue, the stipulated penalties shall be discharged.

84. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 81.

85. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Order.

86. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XXV. Covenant Not to Sue by EPA

87. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the continuing and satisfactory performance by Respondents of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XIX. This covenant not to sue is also conditioned upon the veracity of information provided to EPA by the Respondents in this Order. Except as provided in paragraph 20, this covenant not to sue extends only to Respondents and does not extend to any other person.

XXVI. RESERVATIONS OF RIGHTS BY EPA

88. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

89. The covenant not to sue set forth in Section XXV above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Order;
- b. liability based on Respondents' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in a ROD, this Order, or otherwise ordered by EPA, after signature of this Order by the Respondents;
- c. criminal liability;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments arising from negligent acts or omissions of the Respondents or their contractors;
- e. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site
- f. liability for violations of federal or state law which occur during or after implementation of Removal or Remedial Actions; and
- g. liability for additional response actions that EPA determines are necessary to achieve Remedial Action Objectives.

XXVII. DTSC AND RWQCB COVENANT NOT TO SUE

90. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Order, and except as otherwise specifically provided in this Order, DTSC and RWQCB covenant not to sue or to take administrative action against Respondents pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the continuing and satisfactory performance by Respondents of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XIX. This covenant not to sue is also conditioned upon the veracity of information provided to DTSC and RWQCB by the Respondents in this Order. Except as provided in paragraph 20, this covenant not to sue extends only to Respondents and does not extend to any other person.

XXVIII. DTSC AND RWQCB RESERVATIONS OF RIGHTS

91. The covenant not to sue by DTSC and RWQCB set forth in Section XXVII does not pertain to any matters other than those expressly identified therein. DTSC and RWQCB reserve, and this Order is without prejudice to, all rights against Respondents with respect to all other matters, including but not limited to:

(a) claims based on a failure by Respondents to meet a requirement of this Order;

(b) liability for costs incurred or to be incurred by the State that are not reimbursed by Respondents pursuant to this Order, except for Navy-Retained Conditions;

(c) liability for performance of response actions other than the Work approved under the Order performed by Respondents pursuant to this Order, except for Navy-Retained Conditions;

(d) criminal liability;

(e) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

(f) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site unless such waste material constitute Navy-Retained Conditions; and

(g) liability for violations of local, state or federal law or regulations.

COVENANTS BY RESPONDENTS

92. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, or the State, or its contractors and employees, with respect to Existing Contamination, Future Response Costs, or this Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Work required by this Order; or

c. any claim arising out of the Work or arising out of the response actions for which the Future Response Costs have or will be incurred, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

d.

These covenants not to sue do not apply to any claim or cause of action Respondents may have against the United States as a result of acts or omissions for which the United States Navy is responsible, including but not limited to rights under CERCLA or Section 330 of the FY 1992 National Defense Authorization Act, as amended or under the Conveyance Agreement for Hunters Point Shipyard between the United States Navy and SFRA on _____, or under any deed to be executed by the Navy for any portion of the Site.

Nothing in this paragraph shall be construed or interpreted in a manner inconsistent with the indemnifications, waivers, and releases of liability in the ETCA. (Navy Note: We will need to coordinate this paragraph with our Navy headquarter's legal counsel).

e.

93. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 89 (b), (c), (d), and (f) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

94. Nothing in this Order shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d)

XXX. OTHER CLAIMS

95. By issuance of this Order, the United States, including EPA, the Navy and the State, including DTSC and RWQCB, assume no liability for injuries or damages to persons or Site resulting from any acts or omissions of Respondents.

96. This order shall not be construed to give rise to any right to judicial review, not otherwise provided by applicable law, of any action or decision by EPA pursuant to this Order, including selection of further response actions by EPA and the Navy

XXXI. CONTRIBUTION

97. Nothing in this Agreement precludes the United States, the State, or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Order, including any claim Respondents may have pursuant to Section 107(a)(4)(B). Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2),(3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

98. In the event of a suit or claim for contribution brought against Respondents, notwithstanding the provisions of Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination (including any claim based on the contention that either Respondents is not a Bonafide Prospective Purchaser ("BFPP"), or has lost its status as a BFPP as a result of actions taken in compliance with this Order or at the directions of EPA's RPM, the Parties agree that this Order shall then constitute an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents would be entitled, from the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of

CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Order. The “matters addressed” in this Order are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States, DTSC, RWQCB or Respondents with respect to Existing Contamination.

99. In the event Respondents were found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a BFPP, or to have lost its status as a BFPP as a result of actions taken in compliance with this Order or at the directions of EPA’s RPM, the Parties agree that this Order shall then constitute an administrative settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have resolved their liability for all response actions taken or to be taken and all response costs incurred or to be incurred by EPA, DTSC, RWQCB or by any other person with respect to Existing Contamination.

100. Respondents agree that with respect to any suit or claim brought by it for matters related to this Order they will notify EPA, DTSC, and RWQCB in writing no later than 60 days prior to the initiation of such suit or claim.

101. Respondents also agree that with respect to any suit or claim for contribution brought against it for matters related to this Order they will notify in writing EPA, DTSC, and RWQCB within 10 days of service of the complaint on it.

XXXII. NONCOMPLIANCE, STOP WORK AND DEFAULT DETERMINATIONS

102. Respondents shall perform and complete all necessary response actions at the Site *(except for Navy-Retained Condition, Special Exclusions, or other activities outside of the Environmental Services)* in accordance with the SOW, CERCLA, the NCP, ARARs not otherwise waived, and relevant guidance. The completion date for any scheduled activity or report may be extended for a period not to exceed 60 days upon written request, provided that such request is received at least 30 days prior to the scheduled completion date

103. Notices of Noncompliance and Stop Work. Following EPA’s determination, after consultation with DTSC, RWQCB, and the Navy, that Respondents have failed to comply with a requirement of this Order, EPA shall give Respondents written notification of the same, with a copy to the Navy, DTSC, and RWQCB and describe the noncompliance (“Notice of Noncompliance”). EPA shall also give Respondents written notification that Respondents should stop work on all or any portion of its response action activities at the Site until EPA determines that Respondents have remedied such noncompliance (“Notice to Stop Work”). Upon receipt of a Notice to Stop Work, Respondents shall immediately stop work on all or any portion of its response action activities at the Site as specified in such notice, and shall remedy the noncompliance. Respondents shall resume such response action activities only upon

receipt of written notification from EPA, after consultation with DTSC, RWQCB, and the Navy, that Respondents may proceed with such activities as specified in the notification.

104. **Finding of Default.** EPA, after consultation with DTSC, RWQCB, and the Navy, may determine that a Default has occurred in one or more of the following situations: (i) EPA has issued to Respondents two or more Notices of Noncompliance for significant noncompliance, with or without accompanying Notices to Stop Work, pursuant to Paragraph 103; (ii) EPA determines that either Respondent is implementing the Work in a manner that may cause endangerment to human health or the environment; (iii) EPA determines that either Respondent has effectively ceased to perform all or a portion of the Work for any reason, including lack of Navy funding through the ETCA, except for a Force Majeure event pursuant to Section XXI that results in only a temporary delay in performance; (iv) either Respondent misappropriates or misuses funds received under the ETCA; or (v) Respondents are substantially and consistently deficient or late in their performance of the Work. Prior to issuance of a Finding of Default, EPA shall provide Respondents in writing (with copies to the Navy, DTSC and RWQCB) with a Notice of Intent to Find Default and of the proposed basis for issuing a Finding of Default. Respondents may dispute the Notice of Intent to Find Default, in accordance with the process provided in Section XXIII (Dispute Resolution), and the Navy may participate in any such dispute resolution as provided in Section ____ of the Amended FFA. In the event of an EPA determination that a Default has occurred, either without Respondents having invoked the Dispute Resolution process in Section XXIII, or following the conclusion of such Dispute Resolution process, EPA will send Respondents a written Finding of Default, with copies to the Navy, DTSC, and RWQCB. The Finding of Default will provide the basis for EPA's determination and will specify whether Respondents may continue to perform the Work while the Navy prepares to resume response action activities under the Amended FFA.

105. Within thirty (30) days of Respondents' receipt of the Finding of Default, or such other time period specified by EPA, Respondents shall cease performance of the Work.

106. In the event that the Navy resumes performance of response action activities under the Amended FFA, Respondents shall fully cooperate in the orderly transfer of responsibilities for performance of the Work to the Navy

XXXIII. ACCESS TO INFORMATION

107. Respondents shall provide to EPA, DTSC, RWQCB, and the Navy, upon request, copies of all documents and information within Respondents' possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA, DTSC, RWQCB, and the Navy for purposes of investigation, information gathering, or testimony, Respondents' employees, agents, or

representatives with knowledge of relevant facts concerning the performance of the Work.

a. Business Confidential and Privileged Documents. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA, DTSC and RWQCB under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, DTSC, RWQCB, and the Navy or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

b. The Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents asserts such a privilege in lieu of providing documents, Respondents shall provide EPA, DTSC, RWQCB, and the Navy with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of the Order shall be withheld on the grounds that they are privileged.

c. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXXIV. RETENTION OF RECORDS

108. Until 10 years after the Respondents' receipt of EPA's notification pursuant to Paragraph 55.c. of Section XVII (Certification of Completion of the Work), Respondents, or their successors, shall preserve and retain all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondents (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary

109. At the conclusion of this document retention period, Respondents, or its successor, shall notify EPA, DTSC, RWQCB, and the Navy at least 90 days prior to the

destruction of any such records or documents, and, upon request by EPA,DTSC, or the Navy, Respondents shall deliver any such records or documents to EPA, DTSC and RWQCB. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, Respondents shall provide EPA, DTSC,RWQCB, and the Navy with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of the Order shall be withheld on the grounds that they are privileged.

XXXV. NOTICES AND SUBMISSIONS

110. Whenever under the terms of this Order, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Order with respect to EPA, DTSC, RWQCB and the Respondents, respectively.

As to the EPA:

Director, Superfund Division
United States Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

and

EPA Project Coordinator, SFD-8-1
United States Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

As to the Regional Financial Management Officer:

Chief, Cost Accounting

United States Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

As to the California Department of Toxic Substances Control:

Anthony J. Landis, P.E.

Chief
Northern California Operations
Office of Military Facilities
Department of Toxic Substance Control
8800 Cal Center Drive
Sacramento, CA 95826

and

Project Manager
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control

and

As to the Navy:

Navy BRAC Environmental Coordinator for Hunter's Point Shipyard
1455 Frazee Road, Suite 900
San Diego, CA 92108-4310

and

As to the San Francisco Bay Regional Water Quality Control Board:

Executive Officer
California Regional Water Quality Control Board,
San Francisco Bay Region

and

Project Manager
California Regional Water Quality Control Board,
San Francisco Bay Region

As to the Respondents:

XXXVI. APPENDICES

111. The following appendices are attached to and incorporated into this Order:

- A. Legal description of the Site
- B. Map of the Site
- C. Statement of Work
- D. ROD Implementation Areas**
- E. Land and Water Use Restrictions (NOTE: What is intended by the – the LUCs? The RMPs?)

XXXVII. COMMUNITY RELATIONS

112. Respondents shall prepare and submit for review and approval by EPA, in consultation with DTSC and RWQCB, a Community Relations Plan, as defined in the SOW. EPA, after consultation with DTSC and RWQCB, will determine the appropriate role for the Respondents under the Plan. Respondents shall also cooperate with EPA, DTSC, and RWQCB in providing information regarding the Work under this Order to the public. As requested by EPA, Respondents shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site or the Work being conducted under this Order.

XXXVIII. MODIFICATIONS

113. EPA, after consultation with DTSC and RWQCB, may determine that in addition to tasks defined in the SOW, or initial approved work plans, other additional work may be necessary to accomplish the Remedial Action Objectives. To the extent that such additional work is within the scope of the RODs and does not otherwise constitute an amendment, modification or supplement to the RODs, EPA, after consultation with DTSC and RWQCB, may request in writing that Respondents perform these response actions and Respondents shall confirm its willingness to perform the additional work, in writing, to EPA, DTSC, RWQCB, and the Navy within 14 days of receipt of EPA's request, or Respondents may invoke dispute resolution in accordance with Section XXIII. Subject to EPA resolution of any dispute, Respondents shall implement the additional tasks which EPA, after consultation with DTSC, RWQCB, and the Navy determines are necessary. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

114. If Respondents seeks permission to deviate from any approved work plan or schedule or the SOW, except as otherwise provided for by field modifications to Remedial Action Work Plan. Respondents' Project Coordinator shall submit a written request to EPA, DTSC, RWQCB, and the Navy for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving written approval from the EPA Project Coordinator, after consultation with the DTSC, RWQCB, and Navy Project Coordinators.

115. No informal advice, guidance, suggestion, or comment by the EPA, DTSC, Navy, or RWQCB Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified in accordance with this Section.

116. This Order shall be made available for a period of not less than thirty (30) days for public notice and comment. The United States, DTSC and RWQCB reserve the right to withdraw or withhold their consent if the comments regarding the Order disclose facts or considerations which indicate that the Order is inappropriate, improper, or inadequate.

XXXIX. TERMINATION

117. This Order shall terminate under one or more of the following circumstances:

- a. Upon a Finding of Default by EPA, in consultation with DTSC and RWQCB, under Paragraph 114; or
- b. Upon the second anniversary of EPA's Certification of Completion of the Remedial Action for the final ROD Implementation Area, pursuant to Paragraph 53 provided that the Respondents shall have completed the initial development cover for all ROD Implementation Areas and have entered into an O & M Agreement with DTSC; or
- c. Upon Respondents' completion of all Environmental Services pursuant to this Order including obtaining Regulatory Closure and performance of Long-Term Obligations throughout the ACES if Respondents do not enter into an O&M Agreement with DTSC which supersedes the Long-Term Obligation/O&M provisions of this Order.

XXXX. EFFECTIVE DATE

118. This Order shall be effective when EPA issues written notice to Respondents that each of the following conditions have been met: a.) the expiration of the public notice and comment period for this Order and EPA's determination that comments received, if any, do not require EPA to modify or withdraw from this Order; b.) the

completion of the public comment process on the FOSET; c.) the execution of the ETCA and the Amended FFA; and d.) EPA's approval of and the Governor of the State of California's concurrence with the Covenant Deferral Request.

ADMINISTRATIVE ORDER ON CONSENT
FOR RI/FS AND RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER HPNS

For Respondents:

Agreed this ____ day of _____, 2____.

ADMINISTRATIVE ORDER ON CONSENT
FOR RI/FS AND RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER HPNS

For EPA:

Agreed this ____ day of _____, 2____.

Michael Montgomery
Assistant Director of Federal Facilities and Site
Cleanup Branch
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

Date

Robert G Carr
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

ADMINISTRATIVE ORDER ON CONSENT
FOR RI/FS AND RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER HPNS

For the United States:

Agreed this ____ day of _____, 2____.

Assistant Attorney General
Environment and Natural Resources Section
U.S. Department of Justice

Washington, D.C. 20530

ADMINISTRATIVE ORDER ON CONSENT
FOR RI/FS AND RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER HPNS

For DTSC:

Agreed this ____ day of _____, 2____.

ADMINISTRATIVE ORDER ON CONSENT
FOR RI/FS AND RD/RA FOR CLEANUP
OF PORTIONS OF THE FORMER HPNS

For RWQCB:

Agreed this ____ day of _____, 2_____.

Pre-RACR RMP comments

TOC - 1.3 Compliance Monitoring is missing.

Section 1.1 - Pre-RACR RMP Scope. Throughout the document the terms "Pre-RACR" and "Post-RACR" have been referenced. However, shouldn't the document really refer to the "Certificate of Completion" since the the area of concern does not have official regulatory closure until a Certificate of Completion is given vs the RACR.

Section 1.1 - Second paragraph. The words, "soil hot spot excavation" should be deleted since the Navy has already removed all soil hot spots that are discussed in the ROD.

Section 1.1 - The Pre-RACR RMP should include the descriptions of "cut and fill". The preparation of the site prior to the construction of the parcel-wide cover needs to specify that it is included in the pre-RACR vs. the Post-RACR

Section 1.3 - Compliance Monitoring: First sentence - Change the "Navy may transfer" to the "Navy intends to transfer".

Section 2.0 - summary of environmental conditions - Add the words "and soil vapor" to the first sentence so it reads, "Soil, groundwater and soil vapor investigations were conducted by the Navy within Parcels B and G....."

Section 2.1 - Soil and Sediment Conditions - Please add that Parcel G does not have any sediment concerns since it is not bordered by any water.
- third paragraph - Please replace the TPH sentence of, "The Navy currently is developing a work plan to complete additional investigation at this site during the summer/fall of 2010" with "The Navy has completed all fieldwork and investigations of the Parcel B petroleum combined sites in Fall of 2010."

Section 2.2 - Groundwater Conditions - 2nd paragraph. Do you want to add the pickling tank lremoval report? I suggest you add the Parcel G RACR instead. The documentation of the tank removal can be included into the final RACR.

Section 3.1.2 - Pre-approved restricted activities - should add language of the pre-approval of preparation or cut and fill work.

Section 3.1.3 Restricted Activities Requiring FFA Signagtory Approval - "Land disturbing activities" that causes or facilitates the movement of any known contaminated groundwater. I added in the "any" to this sentence to also make sure that land disturbing activities do not affect the plumes on Parcel B or G and other adjacent parcels.

Section 3.1.4 - Areas requiring ICs for Volitile Chemicals - Delete the sentence, "The design criteria for vapor mitigation systems in buildings constructed within ARIC's for volitile chemicals are described in the RD and further refined in the RA Work Plan." Design criteria is not included in the RD. The RD states that soil vapor that causes indoor air issues must be low enough to be protective of HH and the environment.

Section 3.1.6 - Compliance with requirements of public agencies that are not parties to the FFA. - Should CDPH be on this list?

Section 3.4 - Public Repository of RMP - Anna E Waden Bayview Library will be closing in December 2010.

Section 4.0 - Reporting and Notice Protocols - 4th bullet. This is getting complicated, is the "cut and fill" operation to prepare the site for the installation of 2' soil cover considered remediation or redevelopment? The insurance states that this practice is remediation since it occurs before a RACR or CC is given. However the permits required for the cut and fill indicate that the activity is redevelopment. Which one should it be, does it matter what we call it?

Section 4.2.3 - Completion Notifications and Reports for Restricted Activities which Requires FFA Signatory Approval - Is the completion report the same thing as a certificate of completion or a RACR or nether? Do we need a CC for this?

Section 4.2.3 - Completion Notifications and reports - 9th bullet - should be a California licensed PE.

Section 4.3 - see comment for section 4.0 above.

Section 5.0 - Risk Management Procedures and Protocols during redevelopment. Do we have any redevelopment activities during the pre-RACR time frame. See comment 4.0.

Section 5.2.2 - Soil Stockpile Management Protocols - add BMPs.

Section 5.3.1 - Movement of Soil - Sounds like a truck will be loaded into a truck and then covered with a tarp. (you don't need to include this comment)

Section 5.5.2 - last paragraph - I don't remember the AOC describing the disposal of ABM.

IC Inspection and Reporting Frequency and Responsibility.

The IC Inspections and reporting need to represent the concerns in the RMP, the LUC RD and the OMP. A consolidated format of the reporting should be implemented.

In order to formalize these comments, we need to address and resolve some overlapping language and documentation in the LUC RD reports, O&M reports, RMPs, and TSRS. The LUC RD should be the definitive document addressing this issue (because it is a CERCLA document) and the other documents should conform to the LUC RD reports. The RMP should merely reflect what is already in the CERCLA documents addressing these issues.

I also note that there are two categories of inspections that are generally required for monitoring compliance with CERCLA remedial action requirements that we need to keep in mind as we address this issue:

i) Inspections and reporting addressing compliance with institutional controls (largely focused on ICs prohibiting or restricting certain conduct (e.g., certain land uses and activities). LUC RD -based inspections and reports address these IC requirements.

ii) Inspections and reporting addressing affirmative remedial obligations such as O&M requirements for engineering controls (ECs)). An example of the latter is the requirement to inspect the integrity of cap/covers to ensure that affirmative RCRA O&M ARARs are complied with, e.g., the affirmative legal RCRA "relevant and appropriate" ARAR requirement (identified in the RODs) requiring repair of damage to remedial covers resulting from natural erosion processes. CERCLA O&M reports cover these affirmative O&M requirements for ECs.

These two categories of inspections and their related reporting requirements have separate and distinct legal bases. However, in the past, we have allowed and encouraged combined inspections and reports that cover both in order to avoid duplication and gain efficiency. The downside is that these coordination /integration practices appear to have caused some confusion regarding the difference between ICs and O&M ECs.

b. Unexpected Conditions.

Section 5.5 of the RMP defines Unexpected Conditions and how to respond to them. Shouldn't the definition of "Unexpected Conditions" be the same as the definition of "Unknown Conditions" in the ETCA? The Navy is currently taking the position that some of the types of contamination described in this section are reasonably expected and known.

c. Deed Restrictions

Is it anticipated that there will be a need for legally enforceable deed restrictions? If so, it remains unclear how portions of the RMP (or the TMSRA, Parcel B ROD Amendment, Parcel G ROD and RD/RA, and Remedial Implementation Reports - see Article 2.4) will become coherent, comprehensive and legally enforceable deed restrictions.

Article 4.7 states that "The ICs reference the Post-RACR RMP and requires compliance with its provisions" and "The Owners who have executed or become bound by the ICs have also agreed by its terms to provide a copy of the Post-RACR RMP governing the parcel being transferred to applicable lessees and/or transferees." These statements in the context of Article 4.7 (and CCC 1471) suggest that the ICs themselves may be stated in the Post RACR RMP and simply referenced in the deed. There are a couple of potential problems with this approach. First, the specific ICs/covenants to be enforced under the deed should not be separated from the deed. Attaching the covenants to the deed is an option. However, the covenants must be written as legally enforceable deed covenants.

Any deed notifications should be expressly identified as well.